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Current Topics.

A Lord Chancellor's Legal Reading.

Mr. H. P. MACMILLAN, K.C., of the Scottish Bar, in an exquisitely phrased and pleasantly reminiscent address, delivered at the recent meeting of the Canadian Bar Association held at St. John's, New Brunswick, after drawing an interesting parallel between the position in the Dominion and the United Kingdom, based on the fact that in each we find two systems of law of different origin and development flourishing side by side, dealt with certain aspects of the law of Scotland and paid a striking tribute to the great institutional writers in whose works we have a *corpus* of the law such as, he maintained, no other modern nation possessed—STAIR, ERSKINE and BELL. The writings of those men are still held in high esteem by those desirous of discovering the principles upon which the law rests, and in this connexion Mr. MACMILLAN mentioned the interesting fact that he was told by an eminent Lord Chancellor, whose attention had been drawn to them for the first time in a Scottish appeal, that he was so attracted by them that he had read through STAIR and ERSKINE in the vacation. Doubtless it proved a long, but at the same time, not an unpleasant task, for, unlike the generality of legal treatises, they are most readable. Like the Lord Chancellor, BOSWELL had a great veneration for the same writers, and in his student days he actually intimated to Sir DAVID DALRYMPLE his intention of transcribing the whole of ERSKINE'S Institute the better to impress the details upon his memory. Whether he actually carried out this heroic resolve does not appear, but it is permissible to express a doubt on the point, for the breaking, as well as the making, of pious resolutions was an ingrained characteristic of poor BOZZY.

Lord Ellenborough's Law.

IN THE recent case of *Greenhill* v. *Federal Insurance Co.*, 70 SOL. J. 565; 31 Com. Cas. 289, dealing with the extent of an assured's obligation to disclose material facts affecting the insurance, the Court of Appeal disapproved of Lord ELLENBOROUGH'S dictum in *Boyd* v. *Dubois*, 3 Camp. 133, that an assured is not bound to disclose to underwriters the condition of the goods which are the subject of the insurance. It is true that this dictum, which has been quoted by every text-writer, generally without comment, as establishing that an assured insuring a cargo is under no obligation to tell the underwriter of any defect in it which may increase the risk, has been questioned in one or two cases, but the Master of the Rolls, in *Greenhill's* case, has taken a somewhat novel point in favour of discounting its value. "It is important to observe," he said, "that the report we have of the case is at the trial at *nisi prius*, at a time when Lord ELLENBOROUGH tried four cases which appear in the same book, reported as tried on the same day." In plain language, the distinguished Chief Justice, in the opinion of the Master of the Rolls, was dealing too hurriedly with the cases before him to be able to give to each of them that ripe consideration which the points demanded. There is much to be said in favour of the familiar maxim "festina lente" despite the clamour we sometimes hear for a speedier despatch of the business of the courts. Lord CAMPBELL has told us that in his reporting days he had a drawer full of "ELLENBOROUGH'S bad law," and it seems a pity that the report of *Boyd* v. *Dubois* was not placed in the same receptacle.

Persuasion to break off Engagement of Marriage.

THE JURY'S FINDING in the case of *Ruben* v. *Moscow*, reported in *The Times* of 27th October, precluded the discussion of the chief point of legal interest raised. Mr. RUBEN had placed money in a bank in the names of his daughter and her fiancé, Mr. MOSCOW, and the engagement was broken off through, as Mr. MOSCOW alleged, the wrongful interference of Mr. RUBEN, his prospective father-in-law. The latter sought a declaration that, in the circumstances, the money was his, and, on the finding that the engagement was terminated by mutual consent, judgment in his favour followed, with an order against the defendant to release the fund. The latter had, however, counter-claimed for damages due to the plaintiff's wrongful persuasion of his daughter to break off the match.

If the finding had been that Miss RUBEN jilted MOSCOW at the instance of her father, the nice question would have arisen whether the latter did MOSCOW an actionable wrong. The argument no doubt would have been that a mutual contract to marry is recognised by law (see *Vincall* v. *Veness*, 1865, 4 F. & F. 344), and, damages lying for its breach without justification, damages would also lie for procuring a breach on the long line of authorities of which *Lumley* v. *Gye*, 1853,

2 E. & B. 216, and *South Wales Miners Federation* v. *Glamorgan Coal Co.*, 1905, A.C. 239, may be quoted. The present law has virtually been built up on *Lumley* v. *Gye*, and there was some doubt then whether it only applied if the contract was founded on the Statute of Labourers, or, at least, was one of service. But in the later authorities the proposition seems to be widened to cover all contracts, though a rejected lover does not hitherto appear to have received the legal solace of damages either from a parent or a successful rival. In any case, it can hardly be supposed that the honest advice of a parent, or person *in loco parentis*, to break off an engagement which seemed unwise to him or her would be actionable. Possibly even the successful rival might plead privilege on the ground that his love for the lady, evidenced by his proposal, was proof that he must have been acting purely in her interest. But matches have sometimes been broken off owing to the gossip and scandal of mere lying mischief-makers, and an action against such a person by one suffering from such conduct would be a legal adventure on which the plaintiff might embark with considerable sympathy. The old case of *Shepard* v. *Wakeman*, 1670, Siderfin, 79, which does not appear to have found its way into the regular text-books, might no doubt be quoted on his behalf. There the defendant had written to the intending husband, "You ought not to marry her, for before God she is my wife; and therefore if you do, you will live [etc.] and your children will be [etc.]." The plaintiff, the lady in question, sued him for losing her the match, and, after considerable difference of opinion, obtained her judgment on the ground that the words spoken were false and malicious.

Punishment for Assault on Prison Officer.

A NOVEL and a curious point, about which there does not appear to be any previous authority, was raised before the Divisional Court on a case stated by Quarter Sessions in *Pointing* v. *Wilson* (70 SOL. J., p. 1091). The point of law raised in that case was shortly whether an assault on a prison warder was, so far as the measure of punishment was concerned, on the same footing as an assault on a constable. It appeared that in this case the appellant POINTING, who was a convict undergoing a sentence of penal servitude, assaulted a prison officer. The appellant was thereupon brought before the governor of the prison, who referred the matter to the visiting justices. The latter ordered the appellant to be flogged, but this sentence could not be carried out as the appellant suffered from a weak heart. The appellant was subsequently prosecuted before a court of summary jurisdiction, who sentenced him to six months imprisonment with hard labour; to follow on the sentence of penal servitude which the appellant was already serving. The appellant appealed to Quarter Sessions, and later to the Divisional Court. The question that was raised was whether the assault on the prison officer was to be treated on the same footing as an assault on a constable. Now, s. 10 of the Prison Act, 1898, provides that: "Every prison officer, while acting as such, shall by virtue of his appointment have all the powers, authorities, protection and privileges of a constable." The Divisional Court held that the expression "privileges" in the above section was not to be construed in a narrow sense as referring only to the immunity conferred upon police officers for acts done in the execution of their duties, and that the section clearly put prison officers, as far as the measure of punishment for assault was concerned, on precisely the same footing as police constables. Another point was taken in *Pointing* v. *Wilson*, but not before the Divisional Court, viz.: that the justices had no jurisdiction to hear the summons for assault inasmuch as the visiting justices had already dealt with the matter, and had sentenced the appellant to a flogging. There would appear to be some substance in this contention of the appellant, since it might have been argued that the matter was *res judicata*. This contention, however, was overruled in the court below, a decision that might be explained on the ground that the sentence of the visiting justices was in the nature of a ministerial rather than a judicial act. The conclusions to be derived from *Pointing* v. *Wilson* would, therefore, appear to be (i) that the fact that a prisoner has been sentenced by the visiting justices for an assault, does not prevent a court from subsequently dealing with a charge in respect of the same offence, and (ii) that s. 10 of the Prison Act, 1898, puts prison officers on exactly the same footing as a constable in such a case, so that in the case of an assault on a prison officer, the heavier punishment, as in the case of an assault on a constable, might be inflicted.

An Important Workmen's Compensation Decision.

THE CASE OF *Clement* v. *Davis & Sons Ltd.*, *Times*, 29th Oct., 1926, which was decided by the House of Lords recently, appears to have been virtually an appeal from the decision of the Court of Appeal in the earlier case of *Moakes* v. *Blackwell Colliery Co. Ltd.*, 1925, 2 K.B. 64, where the facts were practically identical. These cases raised an important question under the Workmen's Compensation Acts, as to whether the provisions of s. 24 (2) of the Workmen's Compensation Act, 1923 (since re-enacted in the consolidating Workmen's Compensation Act, 1925), were retrospective in their operation, viz., whether they applied to cases in which the accident or injury to the workman occurred *prior to* the commencement of the Workmen's Compensation Act, 1923 (1st January, 1924), the death, of course, taking place subsequently to the passing of that Act. Prior to the passing of the 1923 Act, the Workmen's Compensation Acts gave the dependants of a deceased workman the right to recover compensation from his employers, to the maximum amount of £300, but where weekly payments by way of compensation had been made to the workman prior to his decease, the Acts provided that these sums might be deducted from any sum to which the dependants of the deceased workman might be entitled (Workmen's Compensation Act, 1906, 1st Sched., para. (1) (*a*) (i). The Workmen's Compensation Act, 1923, by s. 24 (2), however, provides that no such deduction is to be made, so as to reduce the sum payable to the dependants below £200. The question, therefore arises, as to whether the dependants of a deceased workman, where the death of the workman takes place subsequently to the 1st January, 1924, can claim the benefit of the provisions of s. 24 (2), notwithstanding that the accident to the workman has taken place prior to the 1st January, 1924. The House of Lords however have held, affirming the principle laid down by the Court of Appeal in *Moakes* v. *Blackwell Colliery Co. Ltd.*, that s. 24 (2) of the Workmen's Compensation Act, 1923, has not this retrospective operation, and that, too, notwithstanding that s-s. (3) of s. 24 of the Workmen's Compensation Act, 1923 (which deals with medical and burial expenses) appears necessarily to be retrospective, and notwithstanding also that s. 24 is not included as might have been expected, among the sections expressly mentioned in s. 30 of the Workmen's Compensation Act, 1923. This section expressly provides that ss. 2 to 10 of the Workmen's Compensation Act, 1923, are not to apply to cases where the accident to the workman happened before the commencement of the Act. In deciding against the restrospective operation of s-s. (2) of s. 24 of the Workmen's Compensation Act, 1923, the House of Lords appears to have been influenced to a large extent by one of the general principles which are applied in the interpretation of statutes, viz., that except where it is clearly indicated otherwise, an Act which changes the law will not be construed in such a way as to affect vested rights and liabilities. This canon of construction is expressly dealt with in s. 38 of the Interpretation Act, 1889, but as the House of Lords pointed out in *Clement* v. *Davis & Sons Ltd.*, it is a canon of construction which exists and will be applied quite independently of any provision to the same effect contained in the Interpretation Act, 1889.

The Courts of Scotland.

(*Continued from p.* 1061.)

Judgment.

A judgment in Scotland is known as a decree. Execution does not issue on a decree until it has been "extracted." Eight days must usually elapse after judgment before a decree may be extracted. The time varies however, and it is not usual for the decree to be extracted until the reclaiming days have expired. Any attempt to extract it before the time for appealing is up is usually prevented by the agent of the party against whom judgment has been pronounced borrowing the process. When expenses have been awarded on account of these is made up and taxed by the auditor of the court and the account lodged for approval before extract. If judgment for interest is desired the interest must be concluded for in the summons and the question decided as part of the cause. On the other hand interest runs from the date of the decree although not specially decerned for, and it also runs on the amount of costs from the date of the interlocutor approving of the auditor's report.

Execution.

Diligence is the general name applied to all forms of execution following upon a judgment in the Scottish courts. It is also applied to certain forms of execution in security. Thus it is usual when the pursuer fears that there will be difficulty in satisfying the judgment he expects to obtain to use the process of arrestment on the dependence of the action so far as the moveable estate of the defender is concerned, and the process of inhibition against the defender's realty. The former secures to the pursuer all moveable property in the hands of third persons due to or belonging to the defender. The latter prevents the realty of the defender being dealt with by him to the prejudice of the pursuer pending the result of the action. The moveable property is ultimately made available to the judgment creditor by the process of furthcoming and the realty by the process of adjudication. Every Court of Session summons containing pecuniary conclusions is followed by a decree which includes a warrant to (1) arrest, and (2) charge and poind. The judgment creditor who avails himself of the first mentioned (called the arrester) instructs a messenger-at-arms to serve a schedule of arrestment on any third party (called the arrestee) holding property belonging to or due money to the judgment debtor (called the common debtor). This prevents the arrestee dealing with the property except to the instructions of the arrester until the judgment is satisfied, and if the judgment is not satisfied the property is made available to the arrester by an action of furthcoming. Charge and poind is the process used to attach the moveable property of the debtor in his own possession. A charge is served on the judgment debtor by a messenger charging the debtor to satisfy the judgment within usually fifteen days. On expiry of the days of charge without payment the messenger proceeds to the place where the goods are, accompanied by a valuer. He there proceeds to poind the goods by inventorying them according to the value placed upon them by the valuer to the value of the judgment and costs. Any interference with the goods so poinded amounts to contempt of court, involving imprisonment. The poinding is reported to the Sheriff, and thereafter a warrant to sell on a specified day is granted and the judgment satisfied out of the proceeds. It is always competent, of course, on the expiry of the days of charge to apply for sequestration of the debtor's estates, and so render him bankrupt, expiry of a charge without payment being one of the statutory evidences of notour bankruptcy. Imprisonment is not competent under a civil process except in the case of (1) wilful failure to implement decrees *ad facta præstanda*, and (2) wilful failure to satisfy a decree for aliment or rates and taxes.

Some special Forms of Action.

Petitions.—These are not strictly speaking actions at all. They are the forms of process in use in most matters which begin as *ex parte* applications, although at a later stage they may become contentious. In form they are simply addresses to the court, and their procedure is largely a question depending on each individual petition, unless the petition falls within a particular category where a definite practice has grown up. Petitions are chiefly used in statutory applications for authority to do something, and in connection with the administration of trusts and company winding up, and in all matters which in England are usually dealt with in the Chancery Division of the High Court.

Consistorial Actions.—This term embraces all actions relating to the constitution, continuance and dissolution of marriage. If the action involves any question of status the husband at the time the cause of action arose have had his permanent domicile in Scotland, but thereafter he cannot by changing his domicile for that purpose deprive his wife of redress in the Courts of Scotland. In an action of this kind the summons must be served on the defender personally, even if he or she is abroad and the address known. But this may be done by anyone duly authorised for the purpose, and need not necessarily be by an officer of law. If the defender cannot be found, the summons may be served edictally, but in such case the summons must also be served on the children of the marriage and one or more of the defender's next-of-kin where the children and next-of-kin reside in the United Kingdom. Unlike an ordinary action, the defender in this process may enter appearance to defend at any stage of the proceedings. The Lord Advocate may also appear in the process in the public interest, and the action may be defended by anyone having a patrimonial interest to defend or by the defender's creditors. The wife, whether pursuer or defender, successful or unsuccessful, usually gets expenses, and where she has no separate estate she is usually awarded interim aliment and a sum towards expenses during the progress of the suit. Even if undefended, proof must always be led in these actions, and in the action of divorce the pursuer before proceeding to trial must always take the Oath of Calumny, *i.e.*, that there is no collusion in the action between pursuer and defender. The procedure in an undefended action of divorce is very simple. The summons is served as above. The pursuer enrols the case before the Lord Ordinary to have the libel (the averments in the condescendence which found the action in law) found relevant and a diet of proof fixed as early as possible. At the trial the proof is as short as is consistent with reasonable investigation of the facts alleged, and the whole process, if the case is begun in session, is of very short duration.

Special Cases.—In some respects this procedure is closely analogous to the form of special case provided for in the High Court in England by the R. S. C., while in some respects it fulfils the function sometimes adopted in an originating summons. Where the parties are agreed as to facts, but not as to the law, or where they are at variance on the interpretation of a document, they may by this process expeditiously obtain the opinion of the court on the questions of law at no great expense. A special case is prepared setting forth the agreed on facts. The questions of law in issue are framed in a series of questions that the court is asked to answer. The case is printed and signed by counsel of the respective parties. It is then boxed, and appears in the single bills of the Inner House and is put out for hearing on the Short Roll. When it has been argued the opinion of the court is given in the form of answers affirmative or negative of the questions asked. The questions of law asked must not be hypothetical, but such as could be competently raised by another process of court, and the case must disclose some controversy between the parties and some interest to have the question decided.

(*To be continued.*)

Unregistered Associations as Defendants.

A JUDGMENT of great importance on the question as to who are the proper persons to be sued in an action against an unincorporated association was recently delivered by the Court of Appeal in *Ideal Films, Ltd.* v. *Richards and others*, *Times*, 26th October, 1926. Inasmuch as an unincorporated association of persons is not a single entity, like an incorporated body, which is a distinct legal person, *i.e.*, distinct from the persons constituting it (*Salomon* v. *Salomon & Co., Ltd.*, 1897, A.C. 22), it is necessary, strictly, that all the members of the unincorporated association should be sued. The inconvenience, however, which would usually arise by making a great number of persons, constituting the unincorporated association, parties to the action is obviated by the provisions in the Rules of the Supreme Court for the bringing of representative actions.

Order 16, r. 9, provides that "where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court or a judge to defend in such cause or matter, on behalf of or for the benefit of all persons so interested."

With this rule must also be read O. III, r. 4, which provides that "If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by such of the Forms in Appendix A, Part III, s. vii, as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued."

Although the Rules contain no provisions as to whether the representative capacity of the party or parties should also be stated in the title or in the statement of claim, it would appear from the cases referred to below that the representative capacity should also be stated both in the title and in the statement of claim.

Thus in *Re Royle*, 1877, 5 Ch. D. 540, where a creditor was suing for the administration of an intestate's real and personal estate, BACON, V.-C., following *Worraker* v. *Pryer*, 2 Ch. D. 109, directed the writ (i.e., the title of the writ) to be amended by making it an action by plaintiff on behalf of himself and all other creditors.

Reference may also be made to *Re Tottenham*, 1896, 1 Ch. 628, which was also a creditor's action for the administration of the real and personal estate of a deceased debtor. Neither the title of the writ nor the indorsement nor the title of the statement of claim showed that the plaintiff was suing on behalf of the other creditors, this fact appearing only in a paragraph at the end of the statement of claim. NORTH, J., directed the statement of claim to be amended by adding to the title thereof a statement to the effect that the plaintiff was suing on behalf of all the other creditors.

The judgment of NORTH, J., may be quoted with advantage. After referring to *Eyre* v. *Cox*, 24 W. R. 317, NORTH, J., continued: "I think it must have been stated in the title of the statement of claim in that case that the plaintiff was suing on behalf of all the other creditors. The action was by a creditor for administration of real and personal estate, and the Master of the Rolls is reported to have said: 'Where it appeared on the statement of claim that the plaintiff in such an action was suing on behalf of himself and all other creditors it was not necessary to amend the writ by the insertion of those words. The writ, however, as well as the statement of claim ought to be intituled, according to the forms of statement in Appeal Cases, in the matter of the estate; for the object of that heading was that the register should show what estates were affected by actions for administration.' I think that the reference there to the action being intituled 'in the matter of the estate' in question, shows that the matter with which the Master of the Rolls was dealing was the title of the action, and that the reason why he considered it unnecessary that the writ should be amended, was because the title of the statement of claim showed that the plaintiff was suing in a representative character. A statement buried somewhere in the statement of claim that the plaintiff is suing on behalf of all the creditors of the testatrix would be of no use. The statement ought to appear in the title of the action, and then it will appear throughout that the action is a creditor's action."

It often happens that a representative action against an unincorporated association results practically in a declatory judgment of liability, and does not get the plaintiff much farther. In such cases, therefore, the question of joining the trustees is a matter for consideration, and it is by reason of its bearing on this point that the judgment in *Ideal Films, Ltd.*, v. *Richards and others, supra*, may be studied with advantage.

In that case some of the defendants were members of an unincorporated and unregistered association of miners and other workmen, and were also members of a committee appointed to conduct the affairs of the association, and they were sued "as representing the general body of the members." The claim was in respect of certain contracts entered into by the plaintiffs with the committee for the supply of films for exhibition at a cinema theatre, for the benefit of the members of the association. The plaintiffs added as defendants to the action the trustees of the association, and claimed, *inter alia*, an order directing the trustees to pay the amount claimed, together with the costs of the action, out of the property and assets of the association in the hands of the trustees. Mr. Justice HORRIDGE made an order striking out the names of the trustees from the writ and statement of claim, but on appeal the Court of Appeal reversed the decision of Mr. Justice HORRIDGE. The Court of Appeal appear to have relied to a great extent on the dicta of Lord LINDLEY, in *Taff Vale Railway* v. *Amalgamated Society of Railway Servants*, 1901, A. C., at p. 443, which case decided that a trade union which was registered under the Trade Union Acts could be sued, although it was not an incorporated association, in its registered name. Lord LINDLEY is reported as having said, in that case, *ib.*, at p. 443:—

"I have myself no doubt whatever that if the trade union could not be sued in this case in its registered name, some of its members (namely its executive committee) could be sued on behalf of themselves and the other members of the society, and an injunction and judgment for damages could be obtained in a proper case in an action so framed. Further, it is in my opinion equally plain that if the trustees in whom the property of the society is legally vested were added as parties, an order could be made in the same action for the payment by them out of the funds of the society of all damages and costs for which the plaintiff might obtain judgment against the trade union."

It must not be thought, however, that the above principle is a general principle which will in all cases entitle a plaintiff to join the trustees as defendants in an action brought against an unincorporated association. The Court of Appeal, in *Ideal Films, Ltd.* v. *Richards*, appear to have declined to lay down any universal principle, though they expressed the opinion that the joinder of trustees as defendants was a permissible and convenient practice, where it was desired to enforce a liability against an unregistered and unincorporated association of individuals, who had incurred liabilities in respect of which there was difficulty in recovering judgment.

In conclusion, reference may be made to *Walker* v. *Sur*, 1914, 2 K.B. 930. There, an architect sued for professional services rendered in connexion with a hospital. The defendants to the suit were four persons, who were members of an unincorporated religious society, and they were sued "on their own behalf and on behalf of all the members of the society." At a subsequent stage of the proceedings the plaintiff, with a view to binding the property of the society,

took out a summons under Ord. XVI, r. 9, asking that, *inter alia*, as the members of the society were numerous, the defendant be directed to defend the action on behalf of or for the benefit of all persons so interested, pursuant to Ord. XVI, r. 9. It should be observed, however, that the four persons who were made defendants were not trustees of the society, nor were they representative so as to be proper persons for the court to adopt as qualified to defend on behalf of the absent parties (*ib.*, at p. 936), as for example, managers or members of a committee of management. The Court of Appeal declined to make the order prayed for. In his judgment, KENNEDY, L.J., said (*ib.*, at pp. 936, 937): "I admit that I feel a difficulty in saying what does, and in general terms what ought not to, fall within the terms of this permission (i.e., Ord. XVI, r. 9), but of the body in the present case we know very little on the affidavits before us, and it is not pretended that, as was the case in the *Taff Vale* case, *supra*, there are any funds vested in trustees. It is not alleged that there are any such trustees at all, and the claim is to my mind a claim in which it is sought to make a judgment for payment of money effective against a number of persons who belong to a named society, but who have no common fund vested in trustees who could be joined as representing the society."

The Share Qualifications of Directors.

AT a time when proposals for amending the existing law relating to limited companies are being discussed, it may not be out of place to draw attention to a possible source of abuse which seems, from their report, to have escaped the attention of Mr. Wilfred Green's Committee on the operation of the present Acts.

The articles of association of almost every limited company contain a clause to the effect that one of the qualifications necessary for a director is the holding of a certain number of shares in the company. The reason, of course, is obvious—a director with a substantial pecuniary interest in the company is more likely to have the interests of the shareholders at heart.

Now, the question has arisen on more than one occasion whether a holding of the minimum number of shares *jointly* with another person is sufficient; and it has been held that it is. Thus, in the most recent case in which the point was argued (*Grundy* v. *Briggs*, 1910, 1 Ch. 444), Mr. Justice EVE held that a joint holding by the plaintiff and three other persons of 112 shares in a company was a holding by the plaintiff of twenty shares—the qualifying number. The learned judge expressed his concurrence in the opinion of Lords Justices LINDLEY and DAVEY in *Dunster's Case* (*In re Glory Paper Mills Co.*, 1894, 3 Ch. 473), a case which deserves attention, for there the number of shares held jointly did not exceed the minimum required by the articles—*i.e.*, a share qualification of 100 shares was satisfied as to A by a holding of 100 shares jointly by A and B. This being so, the question at once arises: Assuming that the share qualification is the holding of 100 shares, is the holding of that number of shares, and no more, by A and B jointly a sufficient qualification for both A and B *at the same time?* In view of the decision in the last-mentioned case, it is difficult to see any logical reason why it should not suffice; the "qualification value" of B's holding cannot be altered by a variation in the personal status of A.

The root of the difficulty is to be found in the fact that although a joint holding of the qualifying number of shares reduces the director's personal stake in the company, it does at the same time increase the security available to the company for calls and other claims, and this was the view taken by the Court of Appeal in *Dunster's Case*, *supra*. "I entirely agree," said DAVEY, L.J., "that a man is none the less a holder of 100 shares because the company has the additional advantage of having another person joined with him, both of those joint holders being jointly and severally liable to the company." Nor can the shareholder be protected by a proviso that the qualifying shares must be held by the director "in his own right," for this phrase (for the purposes here discussed) was held by JESSEL, M.R., to be of no effect (*Pulbrook* v. *Richmond Consolidated Mining Company*, 9 Ch. D. 610) in a decision which, though questioned at the time, has always been followed and must now be taken as settled law: *Sutton* v. *English and Colonial Produce Company*, 1902, 2 Ch. 502.

The matter may be viewed from another angle. Section 81 of the Companies (Consolidation) Act, 1908, deals with the prospectus and the matters which must be disclosed therein and of which one of the more important is the degree to which the directors are prepared to put faith in the company themselves. The object of the Legislature in enacting these detailed provisions was to prevent the public from being either misled or defrauded; but the effect of the decisions above referred to, is, it appears, to give an opportunity for promoters, if not to defraud, at least to mislead prospective shareholders. M.

A Conveyancer's Diary.

Restrictive Covenants after 1925.

An esteemed correspondent points out, in relation to restrictive covenants entered into after 1925, but more than thirty years before the date of the sale or other transaction, that, in view of L.P.A., 1925, s. 44 (8), and in spite of s. 198, if the covenants are not referred to in any of the abstracted documents or in any endorsement (s. 200) thereon, the purchaser without notice would take free therefrom though a land charge had been registered against the name of the covenantor, for this name would not appear in the abstract. That would appear to be correct. But what has, it seems, been overlooked, is that the abstract will contain official certificates of search (as to the effect of which see L.P.A., 1925, s. 17 (3); L.P. (Amend.) A., 1926, s. 4), which should show whether or not the respective owners, appearing in the abstract, have entered into restrictive covenants duly registered; these certificates will carry the matter back at any rate to the last preceding purchase. It must not be assumed that, because a land charge has been registered, a vendor will not insist on conveying, subject to any enforceable covenants. Far from it, for if he has entered into the covenants or entered into covenants to indemnify a predecessor from liability for a breach, he will insist on the usual reference thereto being made in the conveyance to free him from liability under his implied covenants against incumbrances or to reduce his risks under the indemnity. Then again there will not be the same inducement for the purchaser to suggest that it is unnecessary to refer to the covenants in his conveyance; a land charge having been registered, he cannot entertain any false hopes that he will, unless he can make out a case for modification or discharge (s. 84), take the land free from the obligations imposed.

No doubt under the pre-1926 law it was the duty of a vendor to disclose any restrictive covenants affecting his title, but it cannot be said, with truth, that a reference was, by any means, invariably made to these covenants in conveyances, at any rate in those cases where, if no reference was made, the vendor would not have been subjected to liability.

The fact that, under the old law, a purchaser without notice took free from the covenants, operated as an inducement to say nothing about them in the conveyance; the vendor having disclosed them, he might have been advised that he was not concerned to see that they were mentioned, there might have been a doubt, for instance, whether the covenants could be enforced.

After 1925 a vendor is only concerned to disclose equitable interests which will not be defeated by the conveyance (s. 10), such as an unregistered covenant, though he probably will not know whether a land charge has been registered, hence will disclose it.

It has been somewhat naively asked why, if a land charge has *not* been registered, a purchaser should take free, although he has notice? Surely if the absence of registration made little or no difference, the covenantee would not register the charge?

A suggestion has been made that a land charge in respect of restrictive covenants should always be registered against the property and where necessary by reference to a plan, as is usually done for the purposes of local land charges, for in this case searches could be made against the property, and not merely against names. That may be ideal, but it involves a considerable expense. Would covenantees be prepared to face it? Would they not say that the protection given by a names register was sufficient for their purpose? We pointed out in "A Conveyancer's Diary," p. 1018 *ante*, that, in the case of leaseholds, covenants were capable of modification or discharge under s. 85 (12) only after fifty years of the term had expired; it does not at all follow that restrictive covenants, whether affecting freeholds or leaseholds, become obsolete after fifty years or must then of necessity be ripe for modification. It was one of the objects of that article to obtain suggestions, which might be brought to the notice of the proper authorities and be of service, should this subject fall to be reconsidered by Parliament.

Title by Tenant for Life and Remainderman.

A correspondent suggests that a tenant for life, who holds the fee simple as trustee, should be able with the concurrence of, say, not more than two remaindermen owning the equitable fee simple in remainder, to force such a title on a purchaser, without joining S.L.A. trustees. We have already mentioned that the making of such a title involves the commutation of succession duty, and the setting aside of a fund to provide for the payment of estate duty which cannot be commuted. Such a retrograde step could not well be taken without giving back to the Inland Revenue their right to enforce the charge for duties against the purchaser; no one would welcome this!

Now, is it any easier, or indeed as easy, to make title in this way as by the tenant for life and his trustees? It might have been easier before 1926 where there were no trustees, though even then the three beneficiaries could, as they still can (S.L.A., 1925, s. 30 (1) (v)), appoint trustees. But in view of ss. 30, 31 (as amended), 32 and 33 of that Act there can seldom be any cases where there will not be trustees, at any rate they can in nearly every case be appointed (not necessarily even under seal: T.A., 1925, s. 36) without going to the court.

Given trustees, and they are necessary to execute a vesting deed (s. 13), so long as the land remains "settled land" then if this is the first vesting deed made for giving effect to a settlement existing on 1st January last, but (speaking generally) only in that case, the title to be investigated will be that of the tenant for life, plus the appointment of the trustees named in the first vesting deed.

What our correspondent ignores is that we are going through a transitional stage during which titles are being approximated to that of stock. When this stage is passed we shall hear no more pathetic complaints of the impropriety of the Legislature, for the good of the public at large, requiring even the small landowner to put his title in order *before* he deals with a purchaser. But supposing that our correspondent has an objection to a vesting deed, to the cost of taking out representation to the estate of the tenant for life on his death, and to making an assent in favour of the remaindermen on trust for sale, he can put an end to the settlement by conveying the land to the three beneficiaries on trust for sale and to hold the income for the tenant for life during his life, and the capital for the remaindermen, for s. 13 only applies when the land remains settled land. The surrender of the life interest in the land terminates the settlement (L.P. (Amend.) A., 1925, amending S.L.A., ss. 1 and 3), and the tenant for life can then convey the fee simple (S.L.A., s. 16) to the three on trust for sale without altering the beneficial interests.

Under the old law the death of the tenant for life had to be proved and evidence of the payment of duties furnished. Now, if a tenant for life dies the production of the probate or letters of administration will be sufficient, though if the representatives have assented the assent will be abstracted. This does not apply if there is a trust for sale, the death of the trustee alone will be proved, the surviving trustees for sale will be able to make title.

Sale by a Joint Tenant to Another.

If A and B are beneficial joint tenants and A sells his interest to B, he will release in the usual way: L.P.A., 1925, s. 36 (2). The result of the release is that B can make title as absolute owner, he can treat the trust for sale as at an end. This was always the case. The L.P. (Amend.) A., 1926, for removing any possible doubt, declares, where a joint tenant survives, that the survivor can deal with his legal estate as if the land were not held on trust for sale.

For some inexplicable reason, when a simple case arises, it seems to be assumed that, instead of clearing the title, the Acts render the position difficult. This is no doubt a passing phase which will disappear when the operation of the Acts has become more familiar to practitioners generally.

Landlord and Tenant Notebook.

Forfeiture, and Relief against Forfeiture, for Non-Payment of Rent.

It is important to note that although the Law of Property Act re-enacts practically all the previous statutory provisions with regard to forfeiture of leases and relief against such forfeiture, the law with regard to forfeiture for non-payment of rent and relief against forfeiture in such cases, remains, except perhaps in one small detail, entirely unaffected by that Act. Section 146 of the L.P.A., 1925, which deals with restrictions on and relief against forfeiture of leases, expressly provides (s-s. (11)), that: "This section does not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent"; and the only part of this section in which non-payment of rent is referred to, is in s-s. (4), which provision expressly provides that an underlessee may obtain relief from the court in the event of the forfeiture of the superior lease, for, *inter alia*, non-payment of rent—a provision which we shall have occasion to deal with later.

At common law, the exercise of a right of re-entry by a landlord on the ground of non-payment of rent, was hedged round by so many minute technicalities and formalities, that it was practically impossible for a landlord effectively to exercise his right of re-entry in such cases. Inasmuch, however, as it may still be necessary to rely on the common law right of re-entry, it may be as well to state shortly the nature of this right.

In the first place, of course, no right of re-entry for non-payment of rent will arise, unless there is a proviso for re-entry, and not merely a covenant to pay rent. It may be convenient to cite the following notes to the report of the case of *Dappa* v. *Mayo*, in (1 "Saunders Reports by Williams," at f. 286B): "Where there is a condition of re-entry reserved for non-payment of rent," says the learned editor, "several things are required by the common law to be previously done by the reversioner to entitle him to re-enter; (1) There must be a demand of the rent . . . (2) The demand must be of the

precise rent due; for if he demands a penny more or less, it will be ill . . . (3) It must be made precisely upon the day when the rent is due and payable by the lease to save the forfeiture. As where the proviso is 'that if the rent shall be behind and unpaid by the space of thirty or any other number of days, after the days of payment, it shall be lawful for the lessor to re-enter,' a demand must be made on the thirtieth or other last day . . . (4) It must be made a convenient time before sunset "—and it must also be added—" and at sunset "—" (5) It must be made upon the land and at the most notorious place of it. Therefore if there be a dwelling-house upon the land the demand must be at the front or fore door, though it is not necessary to enter the house notwithstanding the door be open . . . (6) Unless a place is appointed where the rent is payable; in which case the demand must be made at such place . . ."

The only two cases in which such a formal demand may be dispensed with in order to exercise a right of re-entry for non-payment of rent, are (*a*) where the lease itself contains a stipulation dispensing with the making of any such demand and (*b*) where the provisions of s. 210 of the Common Law Procedure Act, 1852 applies. It should be carefully noted however that a landlord will not be entitled to take advantage of this statutory provision in *all* cases, as will appear from a consideration of the section, the material parts of which are as follows: " In all cases, *between landlord and tenants*,"—and the expression " tenant " will include an assignee or an underlessee—" as often as it shall happen that *one-half year's rent shall be in arrear*, and the landlord or lessor to whom the same is due hath *right by law to re-enter for the non-payment thereof* "—(i.e., to re-enter and determine the lease, and not merely to hold the premises until the arrears are paid off: *Doe. d.* v. *Bowditch*, 1846, 8 Q.B. 973)—" such landlord or lessor shall and may, without any formal demand or re-entry serve a writ in ejectment for the recovery of the demised premises . . .; and in case of judgment against the defendant for non-appearance, if it shall be made appear to the court . . . that half a year's rent was due, before the said writ was served, and that *no sufficient distress was to be found on the demised premises countervailing the arrears* then due, and that the lessee had power to re-enter, then and in every such case, the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made . . ."

It will now be observed that, in order that s. 210 of the Common Law Procedure Act, 1852, might apply, four essentials must be satisfied, viz.: (1) There must be the relationship of landlord and tenant; (2) one-half year's rent must be in arrear; (3) there must be no sufficient distress; (4) there must be a right by law to re-enter for the non-payment of the rent.

Relief Against Forfeiture for Non-Payment of Rent.

To examine now the rules, with regard to the granting of relief against forfeiture for non-payment of rent. Equity from very early times gave relief to a tenant notwithstanding that the landlord had exercised his right of re-entry and actually re-entered into possession. The difficulty, however, occasioned by the equitable rules, which permitted relief to be given, even after the lapse of a considerable time from the date of the exercise by the landlord of his right of re-entry, was obviated by a statutory provision to the effect that relief for non-payment of rent could not be given after the lapse of six months from the date of execution. This provision is now to be found re-enacted in s. 210 of the Common Law Procedure Act, 1852, which provides that " in case the lessee or his assignee or other person claiming or deriving title under the said lease, shall permit and suffer judgment to be had and recovered on such trial in ejectment, and execution to be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after such execution executed, then and in such case, the said lessee, his assignee and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity . . ." With this provision should also be read s. 212 of the Common Law Procedure Act, 1852, which provides for the cessation of all proceedings in ejectment on payment of the arrears and costs. The tenant, it is observed, is entitled to such relief, notwithstanding that the landlord has peaceably re-entered, i.e., without an order made by any court. This point was decided in *Howard* v. *Fanshawe*, 1895, 2 Ch. 581, which appears to be the first reported case dealing with the point (e.g., *ib.*, at p. 588).

Whether or not relief is to be given is entirely discretionary; see now Jud. A., 1925, s. 46 re-enacting s. 1 of the Common Law Procedure Act of 1860; it is not, as is imagined by some people, a matter of right; relief will not as a general rule be granted where the premises have already been let by the landlord after exercising his right of re-entry to another person. In *Stanhope* v. *Haworth*, 3 T.L.R. 34, the Court of Appeal refused to grant relief, on the ground, *inter alia*, that an offer had been made by other parties to take a lease of the same premises. Attention might be drawn to the *dicta* of Lord Justices Lindley and Lopes, in that case (*ib.*, at pp. 35, 36), " Relief," said Lord Justice Lindley, " is not necessarily to be granted because made within the six months. The statute says it shall not be made after the six months, but it may be inequitable even within the six months." Again, Lord Justice Lopes says: " Relief ought not to be granted if the landlord and other parties interested could not be put in the same position as before, and here that was impossible, and the relief asked for would be unjust and inequitable."

Relief to Underlessees

Section 4 of the Conveyancing Act, 1892, which provided for relief to be given to an underlessee, in the event of the forfeiture of a superior lease, did not make any express provision for relief in the case of non-payment of rent, but in *Gray* v. *Bonsall*, 1904, 1 K.B. 601, it was held that s. 4 was an independent provision for affording relief to underlessees, and therefore relief could be given to an underlessee in the event of the forfeiture of the superior lease on the ground of non-payment of rent. Sub-section (4) of s. 146 of the L.P.A., 1925, however, expressly provides for relief to be granted to an underlessee in such circumstances, i.e., even in the case of non-payment of rent. Sub-section (4) is in the following terms: " Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, *or for non-payment of rent*, the court may on application by any person claiming as underlessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as underlessee to any estate or interest in such property upon such conditions . . . as the court in the circumstances of each case may think fit, but in no case shall any such underlessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease."

LAW OF PROPERTY ACTS.

POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

SETTLED LAND—ESTATE *pur autre vie*—TRUSTEES.

513. *Q.* A testator died in 1923, having appointed his son A, his son B, and a friend C, executors and trustees of his will and trustees for the purposes of the Settled Land Acts. All three executors proved the will, and by his will he devised three certain fee simple estates, L, M and N, to his trustees upon trust until the death or re-marriage of his wife to receive profits and pay her a specified weekly sum and to pay rest of profits to his said sons A and B equally. After the death or re-marriage of his said wife he devised—(*a*) Estate L to son A in fee simple if he be living at the date of the death or re-marriage of the said wife, and if A be then dead, to A's wife; (*b*) Estate M to son B (a widower) in fee simple if he be living at date of death or re-marriage of said wife, and if B be then dead unto B's two sons in fee simple as tenants in common in equal shares; (*c*) All the rest of his property (this included estate N) unto his trustees the said A, B and C "Upon trust to sell and convert the same into money and to divide and pay the net proceeds of such sale and conversion unto and equally between said two sons A and B." He also directed that management of all his properties should be in the hands of the said C solely and that he should receive all rents and profits and make all disbursements. The said wife is still living, and a widow. The said son A and the said C are still living. The said son B has just died a widower, leaving two sons, and leaving a will without nominating executors or trustees. I am now dealing with B's estate. By his will B has directed that his debts and funeral expenses should be paid, and then devised as follows: "Unto my son W the property in Victoria-road. To my son X, Bullford Villa, and half each to my two sons of my half share of proceeds of sale of estate N left in my late father's will." B died intestate as to the rest of his property, which is a sum in the Post Office bank of about £30 or £300. The said sons W and X are both living and of full age, but the said son X is in Australia.

(1) After payment of the specified weekly sum to the said wife, what is the position with regard to the rest of the income of the property L, M and N between the date of the death of B and the date of the death of the said wife of the original testator? Presumably the half of the income goes to W and X.

(2) What is the position of the property M? Presumably this will go as a devise direct from the original testator to W and X as tenants in common in equal shares on death of the said wife and the purported devise by B is inoperative.

(3) What is the position as regards B's half share of proceeds of sale of property N? Presumably this goes on death of wife to W and X through the will of the original testator and their father B. (Section 33, Wills Act, 1837).

(4) No executors or trustees having been appointed by B, who will the court appoint? It is obvious it is not desirous of appointing X who is in Australia.

Do the trustees A and C become trustees of B's will in respect of property M and/or in respect of any other property? Please give references to new Acts where applied?

A. (1) The original testator gave an estate *pur autre vie* to A and B, subject to the widow's annuity, in undivided shares, therefore under s. 3 of the Wills Act, 1837, their interests were devisable. There is, however, a question of construction on B's will as to whether his bequest of the half share of the proceeds of sale of estate N carried the rents until sale, the trust for sale not having arisen. This question could not be answered reliably without sight of the will as a whole, but the questioner may be referred to *re Livingstone: Livingstone* v. *Durell*, 1917, 61 L.T. 384, and the cases cited as to the exact meaning of "proceeds of sale." The rents and profits of B's share of estates L and M (and also N if the bequest of proceeds of sale does not carry prior rents) appear to pass on his partial intestacy under s. 1 of the A.E.A., 1925, to his personal representatives, upon trust for sale by virtue of s. 33 (1) (*a*), the proceeds of sale and the rents until sale being dealt with in accordance with ss. 46–47 (special occupancy being abolished by s. 45 (1) (*a*)). If the personal representatives postpone sale under s. 25 (1) of the L.P.A., 1925, which presumably they will do indefinitely, B's share of the rents will be payable as to half to his widow if surviving, and subject thereto upon the statutory trusts of s. 47.

(2) B's reversion in M was contingent on his surviving the testator's widow, so it has failed, and W and X will be beneficially entitled to the proceeds of sale when it is sold, subject to her interest. It is to be noted that the new para. 4 of Pt. IV of the 1st Sched. to the L.P.A., 1925, added by the Sched. to the L.P. (Amend.) Act, 1926, made A and B joint tenants in law of L and N, but not of M, which, by reason of the land not "devolving together" on the death of the original testator's wife, remains subject to para. 1 (3), i.e., vested in the trustees upon trust for sale. The legal estate in M is therefore vested in A and C upon trust for sale.

(3) Since B did not predecease his father, s. 33 of the Wills Act, 1837, cannot apply. B appears to have had a transmissible interest in the reversionary proceeds of sale of N, which he has validly bequeathed.

(4) Without sight of B's will as a whole no opinion can be given as to who would be given preference in the grant *cum testamento annexo*, but if there is no widow, and W and X are the chief beneficiaries presumably W will have it.

A and C are not trustees of B's will for any purposes. They hold estate N upon trust for sale (see answer to *Q.* (2)), and after the death of their testator's widow they will hold the proceeds of sale or the rents until sale (after payment of duties) according to devise (*b*). Estate L will, at the death or marriage of the testator's wife, devolve in fee on A or his wife, according as A survives his mother or otherwise, and if A survives his mother it will be his duty as tenant for life of N until and subject to a contingency which has happened to convey to himself and C on trust for sale: see S.L.A., 1925, s. 7 (5).

UNDIVIDED SHARES—LEASE FOR LIVES OF ONE SHARE—MERGER—SALE.

514. *Q.* A, who died a good many years ago (after 1897), was seised in fee simple, of a moiety of a cottage, and was lessee for life of the other moiety, the only life remaining being that of B. A, by his will, devised the house (without mentioning tenure) to trustees upon trusts, which, in events which have happened, are to pay net proceeds, after payment of outgoings and repairs, to B, for life, with remainder in trust for C, but owing to the wording of will, there is a little doubt whether the trust for her is contingent on her surviving B. If it is, then C takes an ultimate share of the undivided moiety subject to certain other life estates. A gave his trustees a power of sale over all his real estate. D subsequently purchased the fee simple of the undivided moiety leased to A and D, B and C, for their respective interests

mortgaged the property. D died in 1926, leaving all his property to B. C will administer D's estate under letters of administration with the will. It is assumed that the fee simple vested in the public trustee and that B can appoint trustees to oust him. Is this correct? What is the position of the mortgagee bearing in mind the fact that D's estate in the moiety was a freehold one; that B's was apparently an equitable one; and that C's may have been a legal one? A's executor, who was one of the trustees, is dead, and assent may be assumed.

A. The lease of the moiety unaffected by the merger was presumably a legal and not an equitable term. However, since by definition "land" does not include an undivided share of land for the purposes of the L.P.A., 1925, see s. 205 (1) (ix), the opinion is here given that, having regard to s. 1 (1) (*b*), the word "lease," though not completely defined in s. 205 (1) (xxiii), means a lease of land and not an undivided share of land. On this footing, therefore, the lease of the moiety became an equitable interest on 1st January, 1926, under s. 1 (3). This being so, a purchaser would merely have to consider the ownership of the freehold, one moiety being vested in D on 31st December, 1925, and the other in the trustees of A's will, subject to the mortgage, if made before 1926. Accordingly, by virtue of the 1st Sched., Pt. IV, para 1 (4), the property vested in the Public Trustee upon the statutory trusts on 1st January, 1926, and under para. 1 (4) (iii), B can now appoint trustees for sale and divest him, as correctly assumed. If the mortgagees were not mortgagees of the entirety, they do not take a term, but, by the terms of para. 1 (4) (iii), *supra*, they must consent to the appointment of the new trustees (thereby ensuring that they will be persons who will give effect to their security), and they also have the protection of para. 1 (9). If, however, the mortgagees, as such, held an equitable estate in fee simple in the entirety (which would be the case if they held the legal estate in one moiety and the equitable estate in the other) they would take their term under Pt. VII, para. 1.

DEVISE BEFORE 1926—TRUST FOR SALE—RECONVERSION.

515. *Q.* In 1915 X, by her will, devised and bequeathed all her real and personal property to A and B, upon trust for sale, and after payment of her debts, &c., to pay the proceeds to B absolutely, for her sole and separate use. Testatrix died the same year, and her will was duly proved. No sale of her real estate (a dwelling-house) took place, but B took possession and resided therein up to the date of her death; but no conveyance in any form of the property to her was made. In 1921, by her will, B devised the said dwelling-house to her brother Z. She has recently died (in July 1926), and her will is being proved, and Z has contracted to sell the property as beneficial owner. Can the purchaser safely take a conveyance from the vendor Z (in the form of precedent II, p. 617 "Prideaux," 22nd ed.), having reference to first schedule of the L.P.A., 1895, Pt. II, para. 4 (*d*), or will it be necessary for A the surviving trustee of the will of X to join, or to execute a deed vesting the legal estate in Z?

A. As to assent by the executors of X's will, see answer to *Q.* 367, p. 772, and authorities therein mentioned. Having regard to the length of time elapsed, it would certainly seem that a court would imply such assent. Since A and B were to pay debts, it is assumed that they were executors, and, if the debts were paid without recourse to the property, they would hold it as trustees. Since, however, B went into possession, it seems clear that she elected to reconvert the property, especially having regard to the will in 1921, and enjoy it in specie, and therefore A and B held it on a bare trust for her. This being so, the 1st Sched., Pt. ii, paras. 3 and 6 (*d*) applied on 1st January, 1926, and the property vested in B in fee simple on that date. On this footing, A is not a necessary party. If Z has contracted to sell as beneficial owner, he must produce a written assent from B's executors under the A.E.A., 1926, s. 36 (1), or, if executor, he can make assent to himself by the conveyance or otherwise, the purchaser requiring notice of the assent to be endorsed on the probate under s-s. (5).

TRUST FOR SALE.—S.L.A., 1882, s. 63—S.L.A., 1884, s. 7—L.P.A., 1925, s. 29 (4).

516. *Q.* We are acting for the vendors in a sale of property which was devised (with other property) by the will of testator, who died in 1872, to his trustees upon trust for sale "when and as they should think proper" and the proceeds of sale were settled by the will in the events which have happened upon trust for the testator's two daughters in equal shares for life with remainders over. In November, 1910, on an application to the court, the two daughters were authorised to exercise the powers conferred upon a tenant for life by the S.L.A. 1882 to 1890. Are they tenants for life under the S.L.A., 1925, and is a vesting deed necessary? In view of the L.P.A., 1925, s. 29 s-s. 4 should the two daughters convey in the name and on behalf of the trustees for sale, or can the trustees of the will convey under the trust for sale?

A. It is assumed that the order was made under s. 7 of the S.L.A., 1884, and the court therefore must have held that the land was subject to a trust or direction for sale within s. 63 of the S.L.A., 1882. That being so, the land was not settled land within the S.L.A., 1925, see s 1 (7) added by the L.P. (Amend.) A., 1926, Sched. Therefore, the land not being within the Act, no vesting deed under it is necessary. Since the word "shall," rather than "may" is used in s. 29 (4) of the L.P.A., 1925, the opinion is here given that, so long as the order is unrevoked, it must be deemed to operate as an irrevocable delegation of the powers conferred by it, notwithstanding the repeal of the previous enactments. The tenants for life will therefore exercise the power of sale in conformity with the sub-section, not as tenants for life under the S.L.A., 1925, but as persons named in the order. But, since the trustees would have received the purchase money before 1926, the implication is that they will continue to do so.

SPECIAL EXECUTORS.

517. *Q.* A by his will settled land upon his widow, B, for life, and afterwards upon his two daughters, C and D. A died many years ago. The widow, B, died 2nd January last and appointed her daughters, C and D, and her friend, E, the executors of her will, which was duly proved by C, D and E in respect of her free estate. E is the surviving trustee of A's will, and as such the special executor in respect of the settled land; he desires to execute a vesting assent to the next tenant for life and also to appoint a new trustee.

(*a*) Will E have to obtain a grant of probate limited to the settled land before he can execute the vesting assent?

(*b*) Should the appointment of a new trustee be postponed until the grant (if necessary) has been obtained?

A. (*a*) Yes; but the assent will not be made to the "next tenant for life," but to C and D upon the statutory trusts for persons entitled in undivided shares.

(*b*) Yes; that seems to us the better plan.

DURATION OF PRE-1926 TRUST FOR SALE—UNDIVIDED SHARES.

518. *Q.* A and B (sister and brother) became in 1921 tenants in common in equal shares of a freehold house and shop. A died in 1923 and appointed B and C (her son) her trustees for sale in trust for C and D (her daughter) in equal shares. B died in 1924 and appointed E (his wife) and C trustees. By a conveyance in 1925 E and C conveyed B's moiety of the property to C (sole surviving trustee of A), upon and subject to the trusts of A's will. The property has not been sold, and D requires C, as trustee, to convey her half-share to her. D has also agreed to buy C's half-share.

How can C make such a conveyance or conveyances that D can become beneficial owner of the entirety of the premises?

Would the procedure be simplified if an assent by C to the vesting of the property in C and D before the 1st January, 1926, had been given, or could be gathered from C's conduct in relation to the estate ?

A. The best course to take is to appoint another person to act as trustee for sale with C and for the continuing and new trustees then, at the request of C and D, to convey the property to D. The position, so far as it can be ascertained from the data given, is this: Either (1) immediately before 1st January last C held the entirety of the land upon the trusts of A's will, i.e., for persons entitled in undivided shares, and therefore the L.P.A., 1st Sched., Pt. IV. para. 1 (1) applied; or (2) the proceeds of sale had, before 1926, become absolutely vested in persons who were all *sui juris*, and the trust for sale thereby determined, and therefore para. 1 (2), *ib.*, applied and C and D now hold the property upon the statutory trusts and the appointment of an additional trustee is unnecessary. The former alternative is recommended as making the best title, notwithstanding that it involves a little extra expense, as the Conv. Act, 1911, s. 10, and L.P.A., 1925, s. 23, could be relied upon by a purchaser who assumed the continuance of the trust for sale and evidentiary difficulties, seeing that it was only last year that property was conveyed to C "upon and subject to the trusts of A's will."

MORTGAGE BY DEPOSIT—SHOULD IT BE ABSTRACTED ON SALE ?

519. *Q.* A owns freehold land on which a bank has an equitable charge accompanied by deposit of the deeds in the usual form not under seal. A erects houses and sells them off separately. On each sale he must, presumably, abstract the equitable charge and ask the bank to send him the title deeds, including the charge, for production to the purchaser's solicitor. Our practice has been on the occasion of each intermediate sale to obtain from the bank and hand to the purchaser a memorandum signed by the local bank manager stating that the property sold is free from the equitable charge, such memorandum containing an acknowledgment as to production of title deeds including the equitable charge. When the last house is sold the local bank manager endorses the usual receipt under hand only on the charge and stating that the property is free from charge. Several purchasers' solicitors have insisted on this final receipt being under seal of the bank for the reason (*inter alia*) that an effective receipt by a bank can only be given under its seal as it is a limited company. If this contention is correct, which we do not admit, it would seem that the memorandum given by the bank on the occasion of every intermediate sale should also be under seal. The suggestion in the answer to *Q.* 266, SOLICITORS' JOURNAL, 24th April, p. 581, viz., that the bank should join in every sale is not practicable, nor do we think necessary, and we shall be glad to have your view on the point raised. Our view that a discharge under hand only is all that is necessary is supported by "Emmet," Vol. I, 11th ed., p. 447, and also in "A Conveyancer's Diary," SOLICITORS' JOURNAL, 1st May, p. 598 ?

A. We adhere to the view expressed in "A Conveyancer's Diary," *supra*, p. 598, and *cf.* *Q.* 307, pp. 645-6, *supra*, which seems to cover the whole question. Our opinion is indirectly reinforced by reference to "Prideaux," Vol. II, p. 264, where power is given "to the bank, or their agents on their behalf," to "sign a letter stating that the bank have no claim against the property dealt with" on an intermediate sale, etc. It is obviously there assumed that the bank would be bound by such a letter though not under seal. We fail to appreciate the force of the contention that a seal is required as the bank is a "limited company." It would be a startling discovery indeed to find that receipts given in writing only by bank managers do not bind the banks for which such managers act. Another note in "Prideaux," Vol. II (see p. 312) may be referred to: "where the mortgage is only equitable . . . it is sufficient if a simple receipt is endorsed and witnessed and the security delivered back to the mortgagor."

Reviews.

The Encyclopædia of the Laws of Scotland. Consultative Editor: The Rt. Hon. The VISCOUNT DUNEDIN, P.C., G.C.V.O. General Editor: I. N. WARK, K.C., LL.B., Sheriff of Argyll. Assistant Editor: A. C. BLACK, K.C., LL.B. Vol. I. Absolute Disposition—Arrestment. Edinburgh, W. Green & Son. Price 57s. 6d.

The editors of this important, and what shows promise of being an authoritative work on the Laws of Scotland, are to be heartily congratulated on the general appearance, the form and the contents of their first volume. It is to be hoped the very high standard attained by it will be maintained throughout all succeeding volumes.

The General and Assistant Editors have been fortunate enough to secure the assistance of The Right Honourable The Viscount Dunedin, P.C., G.C.V.O., as Consultative Editor, and though in a brief but adequate preface the noble lord modestly renounces his claim to any credit that may be forthcoming to the work, still, we may be sure that the learned editors have not failed to make full use of the great legal knowledge that such a distinguished jurist would put at their disposal.

The idea of an encyclopædia of Scottish Law is traced back by Viscount Dunedin to Bell's Dictionary and Digest, published in 1838; this work in turn arose out of Bell's Dictionary, which was originally published in 1807. The first two editions of the work were simple and concise law dictionaries of no great size or pretentions; in 1827 a third edition was brought out, which was a considerable enlargement of the first two, but still a mere dictionary.

In 1838 Bell's Dictionary and Digest appeared. This was an entirely new work, and in no sense a new edition of the previous publications; it was in fact an encyclopædia, though on a very small scale and still having many characteristics of a dictionary. Lord Dunedin tells us that it was much more of a student's text book than a work of reference for the general practitioner. Successive editions of this work brought about a substantial enlargement, but throughout the original character and style were retained.

It was not until 1896 that a real encyclopædia of Scottish Law on a large scale was produced; this was the first edition of the present work. A second improved and enlarged edition appeared in 1909, which in turn has given place to the present work. The publication in the meantime of "Halsbury's Laws of England" has had a marked effect on the style and system of the work now placed before us, which in addition to bringing the statement of the law completely up to date is in every way a considerable advance on the earlier edition.

The articles are short, but clearly and concisely written, and set out the general law on the subject in an effective and workmanlike fashion with frequent references to authorities; each article is sub-divided into sub-sections, which renders it easy to pick out any point of law required without waste of time or undue reading. English law is only referred to in so far as it affects Scotland, but English cases are fairly often cited. The table of cases is of considerable length, but its value would have been considerably enhanced if the references had been given there as well as on the page where the case is cited. There is a short index to the volume. The print is good, clear and of a size easy to read, a detail not by any means always given due weight to in a book of reference.

Butterworth's Workmen's Compensation Cases. Vol. XVIII (New Series). Being a Continuation of "Minton-Senhouse's Workmen's Compensation Cases," containing Reports of every Case heard in the House of Lords and Court of Appeal, England, and selected Cases heard in the Scottish Court of Session, decided under the Workmen's Compensation Acts, during the Period 1st February, 1925, to 31st January, 1926. Edited by His Honour Judge RUEGG, K.C., and EDGAR

DALE, assisted by K. E. SHELLEY. London: Butterworth and Co. 1926. xviii, 752 and [4] pp. 21s.

The enormously increased importance of the subject of workmen's compensation becomes at once apparent on a perusal of Messrs. Butterworth's well-known collection of cases. Litigation on the subject—at any rate in the higher courts—continues steadily to increase in bulk, and, of course, the cases actually litigated are but a very small percentage indeed of the total number in which claims are made.

The subject which seems to continue to give the greatest difficulty in practice is the meaning of the words "accident arising out of and in the course of the employment." There are as many as eleven cases in this volume in which light was sought on the meaning of these puzzling words. The review of weekly payments seems also a matter of some difficulty and on which the assistance of the higher courts was sought in five cases.

In view of the importance of the subject, it seems that a collection such as the present one is indispensable to the general practitioner.

A Digest of the Criminal Law. By the late Sir JAMES FITZJAMES STEPHEN, Bart. Seventh Edition, by Sir HERBERT STEPHEN, Bart., and Sir HARRY LUSHINGTON STEPHEN. London: Sweet & Maxwell, Ltd. lii and 549 pp. £1 5s.

It is practically fifty years since the first edition of this admirable text-book was conceived and produced by the foremost of our English criminal lawyers. Since that time, as the learned editors in a most readable Preface, containing a brief but instructive survey of modern developments in English criminal law, say, "practically nothing of substance has been added to the law relating to such offences as treason, murder, theft, perjury and forgery." Indeed, they observe "as far as the main framework of the law is concerned, this period may be prolonged to the time of Blackstone, if not to that of Hale, or even that of Coke." The only exceptions to such stability they find in the gradual alteration of the legal position of married women and in the exemption of children and young persons from ordinary punishments.

Two other far-reaching changes receive but a passing reference, for they are outside the scope of a work on indictable offences. These are the enormous increase in the number of petty offences and the modern policy of making ordinary offences punishable alternatively on indictment or summarily. Attention is drawn in the Preface to the revolutionary changes and reductions in punishments and to the increase in consolidating legislation, and the broadest hint is given of the need of further legislation with the same object, and which would incidentally involve the disappearance of encumbering and unnecessary obscurities.

Needless to say, every care has been used in the preparation of this new edition, and as twenty-two years have now elapsed since the appearance of the sixth edition, all interested in the scientific and practical study of our criminal law will do well to become the possessors of this latest—the seventh edition.

The Trial of Criminal Cases in India. By A. SABONADIÈRE, formerly a District and Sessions Judge in the United Provinces of Agra and Oudh. Calcutta and Simla: Thacker, Spink & Co. 1926. viii and 692 pp. 25s.

We have read with interest Mr. Sabonadière's discussion of the Code of Criminal Procedure in force in British India. The idea of the book is, we think, to vitalise for the benefit of those intending to embark, or who have recently embarked, on an Indian career, a code which on a first or second reading leaves on the mind a somewhat vague impression. The idea is good. The inexperienced reader will, however, require some preliminary guidance as to what portions of the code are of practical importance; an officer may well earn his full pension without meeting with very many of the sections referred to by the learned author. The book also contains several unnecessary passages. An intelligent reader need not be told that "it probably would not be right to release a person (on bail) merely because he had a cold in the head," and the drawing of a rather laboured analogy between a record-keeper and the magisterial mind will add little to his information. In fact, there has been a tendency to spoil a good idea by expanding the theme to cover over 600 pages, not, moreover, including a copy of the code itself for ready reference.

Despite some peculiarity of diction the author makes his meaning clear, and he has had the advantage of local experience. We are, however, unable to agree with all that he says or suggests. We should be sorry to think that any court would allow a witness to have "quite an unhappy quarter of an hour at the hands of a pleader whose only instructions with a view to cross-examination have been a series of libels on the women of the witness's family," and we are amazed to hear that it would be unreasonable to expect from a magistrate or a military officer faced with a crisis "even the amount of thought which an investor will apply in deciding between two or more of several investments in a brief interview with his stockbroker"; but the merits of these and similar passages are to some extent matters of opinion which we will leave to the reader. The book contains some misprints which require correction.

S.

Conveyancing Practice according to the Law of Scotland, by John Burns, W.S. 3rd ed., 1926, pp. 998 and xxiii. Edinburgh. W. Green & Son, Limited. 63s.

We welcome the third edition of this useful single-volume practice book on Scots conveyancing. Like the new editions of English treatises it shows no signs of lessening bulk, for Scots practitioners, as well as English, have had their recent feast of conveyancing and trust legislation, and the provisions of the Trusts (Scotland) Act, 1921, and Conveyancing (Scotland) Act, 1924, have had to be incorporated or referred to in the work where necessary, and corresponding developments have resulted. The forms throughout appear to cover all usual transactions, and the preliminary treatises on the points of law and practice arising in the course of these transactions are, in general, models of clear exposition.

The work is in many ways of considerable interest to the English lawyer. Those would-be law reformers who would deprive an English testator of his power to dispose by will of the whole of his own property, and would introduce family rights approximating to the Scots *legitim, terce* and *jus relictae,* may well pause to consider the complexity of the questions of construction in a Scots marriage contract (p. 656, 751, 765), or trust disposition and settlement (pp. 789, 815), to which this system may give rise, particularly where the testator has made an alternative provision for his family in his lifetime.

A point of practice relating to the sale and purchase of land on which English practitioners are sometimes weak is the matter of the validity of the root of title offered (p. 193). The provisions of s. 31 of the Trusts (Scotland) Act, 1921, which is substantially to the same effect as the Trustee Act, 1925, s. 62, are carefully discussed.

A useful warning is given (p. 789) as to the very different rights given in England and in Scotland by a conveyance of London and Edinburgh houses to A, and the heirs male of his body in fee.

In addition to Scots cases, a considerable number of English authorities are referred to. The result of the English cases as to how far goodwill of a business, whether of a local or personal nature, is comprised in a mortgage of the land on which the business is carried on (p. 431), could be stated, we think, with more confidence. Not the least of the good points of this work, however, is caution, that cardinal virtue of every conveyancer.

C.

The Registrar-General's Statistical Review, 1925. Tables. Part II, Civil. His Majesty's Stationery Office. 5s.

From this Review we gather that the estimated population of England and Wales at 30th June, 1925, was 38,890,000, against 38,746,000 for the previous year, representing an increase of 144,000. The number of births registered in 1925 totalled 710,582, equivalent to a rate of 18.3 of the population, which, with the exception of the war years 1917-1919, is the lowest recorded; indeed, omitting the years 1917-1919 the number of registered births is the lowest in any year since 1861. The proportion of male to 1,000 female births was 1,045. It is interesting to note that this proportion showed a considerable increase during the war years, and reached a maximum of 1,060 in 1919, since when, with one exception, it has shown a continuous decline, though it is still above the proportions recorded since 1860.

The deaths during the year under review numbered 472,841, which correspond to a rate of 12.2 per 1,000, the same as for the previous year, but 0.6 more than that recorded for 1923, which was the lowest on record.

The total number of marriages registered during the year was 295,689, corresponding to a rate of 18.2 persons per 1,000 of the population, and indicates a decrease of 727 marriages over the year 1924. The third quarter of the year was again responsible for the greater number of marriages, being 90,314, or 30.5 per cent. of the total, whereas the number for the first quarter was 46,263, or 15.3 per cent. of the whole. Curiously enough this preference for the third quarter of the year appears to have been a feature of the returns since the commencement of the present century, prior to which the fourth quarter saw the greatest number of marriages recorded.

The total number of decrees *nisi* made absolute during the year was 2,605 (of which 42 were annulled), against 2,286 in 1924 and 2,667 in 1923.

The total number of names on the registers of births, deaths and marriages at the end of the year was 149,220,967, an increase during the year of 1,774,801.

The number of Parliamentary electors on the autumn registers was 19,167,275, representing 10,987,545 males and 8,269,730 females, an increase over 1924 of 177,623 males and 182,810 females. W.P.H.

Books Received.

A Pensioner's Garden. By Lord Darling. 1926. Demy 8vo. pp. 224. Hodder & Stoughton, Ltd., London. 10s. 6d. net.

Murder for Profit. William Bolitho. Demy 8vo. pp. 320. Jonathan Cape, 30, Bedford Square, London. 10s. 6d. net.

The Examination of Witnesses in Court. Frederic J. Wrottesley, K.C. 2nd Edition. 1926. Demy 8vo. pp. iv and 178 (with index). Sweet & Maxwell, Ltd., Chancery Lane; The Carswell Co., Ltd., Toronto; and The Law Book Co. of Australasia, Ltd., Sydney, Melbourne and Brisbane.

Hints on The Legal Duties of Shipmasters. Benedict W. Ginsburg, M.A., LL.B. (Cantab.). 1926. 4th Edition. Revised and Re-set. Crown 8vo. pp. xiv and 310 (with index). Charles Griffin & Co., Ltd., 49, Drury Lane.

Methods of Amalgamation and the Valuation of Businesses for Amalgamation and Other Purposes. A. E. Cutforth, C.B.E., F.C.A. Medium 8vo. pp. xiii and 298. 1926. G. Bell and Sons, Ltd., Portugal Street, W.C.2. 28s. net.

A Guide to The Unemployment Insurance Acts. W. C. Emmerson and E. C. P. Lascelles, O.B.E. (Barrister-at-Law). 1926. Crown 8vo. pp. viii and 172 (with index). Longmans Green & Co., Ltd., 39, Paternoster Row, E.C.4, New York, Toronto, Bombay, Calcutta and Madras 3s net.

The Handy Book of Solicitors' Costs, showing the various steps in Actions and Proceedings in the Different Divisions of the High Court, including the County Court, Mayors' Court, and Conveyancing and General Business, with the corresponding charges therefor, Alphabetically arranged, and complete Tables of Scale Charges under the Conveyancing and Land Registration Acts. A. C. Dayes, Costs Accountant. 1926. 5th Edition. Demy 8vo. pp. xviii and 178. Sweet & Maxwell, Ltd., Chancery Lane. 15s. net.

The Death Duties, comprising Estate, Legacy and Succession Duties, The Law and Practice and The Text of the Statutes. Robert Dymond, Solicitor (Honours), assisted by G. M. Green, LL.B. (Lond.), Solicitor (Honours), both of the Estate Duty Office, Somerset House. 1926. 5th Edition. Demy 8vo. pp. xxxix and 543. The Solicitors' Law Stationery Society, Ltd., Law Publishers, London: 104-7, Fetter Lane, E.C.4; 27 and 28, Walbrook, E.C.; 6, Victoria Street, S.W.; 49, Bedford Row, W.C., and 15, Hanover Street, W. Liverpool: 19-21, North John Street. Glasgow: 66, St. Vincent Street. 21s. net.

The Solicitors' Diary, Almanac and Legal Directory. 1927. Robert Carter, Solicitor. Eighty-third year of Publication. Demy 8vo. pp. xxxviii, 212 and 928. Waterlow and Sons, Ltd., Publishers, London Wall, E.C.

The Tithe Act, 1925 (15 & 16 Geo. V, cap. 87) and some Explanatory Notes thereon. W. C. Tuting, D.D. 1926. Large Crown 8vo. pp. 27, and appendix, 17 pp. E. H. Bartlett, Chapel Street, Exeter. 3s., post free.

The Law of Hire-Purchase as it affects Motor Cars. With Appendix, containing extracts from Statutes, Law Reports, and from Shorthand Notes of Unreported Cases and some Precedents. A. C. Crane, Solicitor. 1926. Demy 8vo. pp. 112 (with index). The Cable Printing & Publishing Co., Ltd., 7, 9 and 11, Theobalds Road, W.C.1. 10s. net.

The Criminal Justice Act, 1925 (annotated), together with Rules, Orders and Forms. E. J. Hayward, Solicitor, Clerk to the Justices for the City of Cardiff. 1926. Demy 8vo. pp. xix and 217 (with index). Butterworth & Co., Bell Yard; Shaw & Sons, Ltd., Fetter Lane. 1926. 17s. 6d. net.

Douglas' Summary Jurisdiction Procedure, containing The Summary Jurisdiction Acts, 1848 to 1899, The Indictable Offences Act, 1848, and The Criminal Justice Administration Act, 1914, The Criminal Justice Acts, 1925-26, together with Notes, Rules and Regulations relating to Courts of Summary Jurisdiction. 10th Edition. Wallace Thoday, LL.B., Assistant Clerk to the Lord Mayor, Mansion House Justice Room. Demy 8vo. pp. xxxiv, 480, and (index) 106. Butterworth & Co., Bell Yard; and Shaw & Sons, Ltd., Fetter Lane. £1 17s. 6d. net. W. P. H.

Correspondence.

Registration of Land Charges in Respect of Restrictive Covenants.

Sir,—I have read with interest "Conveyancer's Diary," of 16th inst., dealing with this topic, but am unable to accept his conclusion that registration is the only practicable method of securing the enforceability of restrictive covenants for a period exceeding the statutory-title-period of thirty years.

No rule is better settled than the duty of a vendor to disclose defects in his title, like restrictive covenants, that cannot be overreached whether they arose before or since the date of the root of title. If a careless or unscrupulous vendor sells without disclosing such defect, and is prepared to run the risk of the consequences, it is, of course, true that a purchaser buying the legal estate without notice actual or constructive of a restrictive covenant, entered into more than thirty years

before, would take free therefrom. But only in rare and exceptional cases has this been possible in the past, and I see no ground for thinking that it would have become easier after 1925 if registration had not been introduced. If the practice hitherto prevailing of referring to existing restrictive covenants in every subsequent conveyance of the land affected is followed as regards post-1925 covenants, as it probably will be and certainly would have been in the absence of registration, the possibility of non-disclosure is negligible and registration is thereby rendered unnecessary. Anyhow, why should a purchaser buying with full knowledge of such covenants escape liability simply because they are unregistered ?

In practice the present method of registration will, in many cases, after thirty years or even less, afford no adequate protection to persons dealing with the land affected by restrictive covenants for the reason that it will be impossible to ascertain the names and addresses of the earlier estate owners since 1925 against whom registration may have been affected, and without this information a search is impracticable. The only efficient method of registration from the point of view of purchasers and mortgagees is to treat restrictive covenants as local land charges and register them accordingly against the property, defined where necessary by a plan.

It may well be said of this new requirement as of much else in the Property Acts *Le mieux est l'ennemi du bien.*

I am unable to follow the inference that fifty years is to be deemed the period of normal utility of a restrictive covenant on freehold land by reason of s-s. (12) of s. 84 of the Law of Property Act, 1925. There is nothing in the section, so far as it deals with freehold land, to limit the jurisdiction of the authority to any period ; and cases may well arise in which covenants ought to be modified or discharged though less than fifty years before.

Redhill, 27th October. W. HOOPER.

Obituary.

Mr. F. E. V. R. ROBERTS, B.A. (Oxon.).

Mr. Francis E. V. Russell Roberts, solicitor and notary public, a member of the firm of Messrs. Hill, Dickinson & Co., 10, Water-street, Liverpool, passed away recently, at his residence, Bronheulog, Abersoch, Carnarvonshire, at the comparatively early age of fifty-seven. For many years Mr. Roberts—who was admitted in 1898—was assistant secretary of the Liverpool Steamship Owners' Association, and in 1923 he succeeded Sir Norman Hill as Secretary when the latter gentleman resigned that office. He was a member of the South Carnarvonshire Yachting Club and of the Abersoch Lifeboat Defence Committee. Mr. Roberts had resided for several years at Abersoch, in the development of which as a seaside resort he took a very active interest.

Mr. E. A. S. SHAW.

On Sunday, the 24th ult., Mr. Edward Arthur Shaw, solicitor, passed away at his residence, 28, Earl-street, Mullingar, at the age of fifty-four. Mr. Shaw—who was admitted in 1898—had built up a large practice and was widely known as a sound and capable lawyer.

Mr. W. A. SHELDON.

Mr. William Robert Sheldon, barrister-at-law, who was for many years a prominent figure at the Chancery Bar, until he retired a few years ago, died recently at the age of sixty-nine. He was educated at Winchester and Lincoln College, Oxford, and was called by Lincoln's Inn in 1882. He was junior counsel to the Board of Inland Revenue, the Charity Commissioners and the Board of Education. Mr. Sheldon was made a Bencher of his Inn in 1913, and was joint author with Sir C. F. Brickdale of the well-known work on the Land Transfer Acts and a joint editor of "Dart's Vendor and Purchaser."

Mr. S. F. JAMES.

Mr. Sidney Frederick James, O.B.E., solicitor, Town Clerk of Ilkeston, passed away in his sleep at his residence on Monday the 25th ult. Mr. James—who was admitted in 1908—had not been well for some days, but his death was quite unexpected. He also held the appointments of clerk to the Education Committee and Deputy Returning Officer for the Ilkeston Parliamentary Division.

Mr. A. SHUTTLEWORTH.

Mr. Arthur Shuttleworth, solicitor, a member of the firm of Messrs. Shuttleworth & Dallas, of 1, Chapel-street, Preston, died recently at Southport at the age of sixty-five. Admitted in 1884 he was well known in Preston, and throughout Lancashire, his family having been connected with legal matters generally in the district for many generations. Mr. Shuttleworth was Seal Keeper for the County Palatine of Lancashire, District Registrar for Preston, and, up to two years ago, Associate of Assize on the Northern Circuit, in which capacity he had served under no less than sixty-three Judges and Commissioners of Assize.

Mr A. M. N. RAWLINS.

Mr. Arthur Montague Northwood Rawlins, solicitor, died at Bournemouth, on the 16th ult., aged sixty-two. Educated at Cheltenham College, he was articled to his brother-in-law, Mr. T. J. Pitfield, of 3, Gray's Inn-square, W.C., and was admitted in 1893, becoming later a partner in the well-known firm of Messrs. Lovell, Son & Pitfield. W. P. H.

Court of Appeal.

No. 1.

In re **Debtors (No. 771 of 1926).** 22nd and 25th October.

BANKRUPTCY — JUDGMENT DEBT — BANKRUPTCY NOTICE THEREON—ACT OF BANKRUPTCY—SECOND BANKRUPTCY NOTICE ISSUED AND SERVED—REFUSAL TO COMPLY WITH—VALIDITY OF NOTICE—RECEIVING ORDER MADE ON SECOND NOTICE—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), ss. 1 (*g*), 2, 4.

Where a bankruptcy notice has been issued and served, but not complied with, and the creditor, before the expiration of three months, issues and serves a second bankruptcy notice, on the ground that he believes the first may be disputed and be invalid, he is not precluded from doing so, and the notice is valid. The debtor cannot refuse to comply with a second bankruptcy notice on the ground that he has committed an act of bankruptcy under the first, and so put it out of his power to make any payment under the second notice.

Ponsford Baker & Co. *v.* Union of London & Smith's Bank, 1906, 2 Ch. 444, *distinguished.*

Appeals from two orders of Mr. Registrar Warmington, refusing to set aside service of a petition, and making a receiving order against the debtors. The debtors carried on business in partnership as art dealers at King's Galleries, Chelsea, and the creditors on 14th March, 1925, brought an action in detinue against them to recover nineteen pictures deposited with them for sale, or their value, stated to be £1,452. Fourteen pictures were returned, leaving five of the total value of £942 still detained. The creditors obtained judgment in January, 1926, and on 17th February, 1926, issued the first bankruptcy notice, which was for the full amount, but was withdrawn. On 2nd March a second bankruptcy notice was issued for £945 4s. and served on one of the partners. On 11th March £100, including £5 for costs,

was paid to the petitioning creditors. On 14th May, believing that service of the current notice on one of the partners might not be sufficient, as the business was said to have been turned into a company, the creditors issued and served a third bankruptcy notice for £857 3s. 4d. and served it on the other debtor at the usual place of business. On 24th June a petition was presented. The debtors contended on appeal that they were not bound to comply, during the period of three months after the act of bankruptcy committed by non-compliance with the second bankruptcy notice, with any subsequent bankruptcy notice, on the ground that they had put it out of their power to make any payment or deal with the partnership assets in any way.

Lord HANWORTH, M.R., having stated the facts as above and read s. 41 (*c*) of the Bankruptcy Act, 1914, said that on 10th June the period of three months from the first act of bankruptcy had expired, and it was impossible to found a petition on it. It was argued that there was no valid service of either the second or the third bankruptcy notice, but for reasons which he had given he thought that the service was a good service. The first appeal, which was to set aside the service of the petition, must therefore fail. On the second appeal, however, a different point was taken. He (his lordship) had pointed out that an act of bankruptcy had been committed by failure to comply with the second bankruptcy notice, but the debtors argued that when the third notice was issued the second was still current, and the debtors were uncertain whether or not they would be made bankrupt under the latter. It appeared to be not uncommon in practice to issue more than one bankruptcy notice, but it was said that there was a principle which gave the debtors the right to refuse to comply with a second bankruptcy notice while a previous one was pending. In *Ponsford Baker & Co.* v. *Union of London & Smith's Bank*, *supra*, Fletcher-Moulton, L.J., delivering the judgment of the court said: "Until commission of the act of bankruptcy he (the debtor) was of course the beneficial owner of whatever assets he possessed, but by the act of bankruptcy his title to be regarded as beneficial owner is no longer absolute, but is contingent on no bankruptcy petition being presented within three months of the date of the act of bankruptcy which leads to the receiving order being made. If such receiving order be made the whole of the assets vest in his trustee as from the date of the act of bankruptcy. He is therefore in the position that should such a contingency occur he is from the date of the act of bankruptcy something less than a trustee of his assets for the creditors in his bankruptcy. Until this state of suspense has been removed either by a receiving order or by lapse of time he has no right to deal with those assets that were in his hands, and can give no title in them to any transferee with notice." It was argued that, applying that doctrine, a debtor against whom there is an available act of bankruptcy must not comply with a bankruptcy notice, for if he did comply there would be an offence committed by him in paying money, as he had no right to deal with any assets in his hands. But to deduce such an argument was to place much too wide an interpretation on the judgment referred to. His lordship then referred to s. 2 of the Act of 1914 and proceeded: The notice therefore was a notice to the debtor that the money must either be paid, secured or compounded for to the satisfaction of the creditor or the court. It might be that the debtor, if he paid, did not give an indefeasible title to the money paid, for his trustee might demand the money for his creditors as a whole. There was no statement by Fletcher-Moulton, L.J., to suggest that the debtor could not lawfully comply with the notice, and he could not use the previous act of bankruptcy for the purpose of refusing to comply with it. In *re G. E. B.* (*a debtor*), 1903, 2 K.B. 390, a debtor claimed that he ought not to be compelled to pay, because if he did he would have a right of set-off against the very debt which was the foundation of the bankruptcy notice, but which he could not set up in the action against him. Vaughan Williams, L.J., said that he must have an effective and not a mere inchoate right of set-off. Regard must be had to the terms of the Act, and not to some other right which might supervene. When therefore the third bankruptcy notice was issued, there was no right on the part of the debtors to refer to the previous notice served upon them and to refuse to comply with the third one. The decision of the registrar was right, and the appeal must be dismissed.

SARGANT, L.J., delivered judgment to the same effect, saying that if the appellant's argument was right it would involve the startling result that payment by the debtor of his creditor's debt at any time, however short, after the expiry of a bankruptcy notice would be illegal and improper. A decision in favour of the appellants would revolutionise the practice in bankruptcy.

COUNSEL: *E. Clayton*, K.C., and *Oscar Kean*; *R. Fortune*.
SOLICITORS: *Pollock, Booth & Addis*; *Langford & Redfern*.

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Pink; Elvin and Another *v.* Nightingale.

Clauson, J. 21st October.

ADMINISTRATION—INSUFFICIENT ESTATE—PROOF OF INSOLVENCY—ONUS OF PROOF—QUESTION OF FACT—ANNUITY—RIGHT OF ANNUITANT TO VALUE HER ANNUITY FOR THE PURPOSE OF PROVING WHETHER THE ESTATE BE SOLVENT OR NOT—JUDICATURE ACT, 1875, 38 & 39 Vict. c. 77, s. 10—RULES OF SUPREME COURT, 1883, Ord. LV, r. 5 A (*a*)—ADMINISTRATION OF ESTATES ACT, 1925, 15 Geo. 5, c. 23, s. 34—BANKRUPTCY ACT, 1914, 4 & 5 Geo. 5, c. 59, s. 30 (4).

An originating summons for administration to which no beneficiary is made respondent is irregular, having regard to Ord. 55, r. 5 A (a). An annuitant on whom is cast the onus of satisfying the court that an estate is insolvent for the purpose of having it administered under the rules of bankruptcy by reason of s. 10 of the Judicature Act, 1875, is entitled for the purpose of testing the solvency or insolvency of the estate to have her annuity valued and treat the capital amount as a debt against the estate.

In re Milan Tramways Company, 1884, 25 Ch. D. 587, *applied*.

Provided that such annuitant can come in and prove as a creditor in proceedings instituted by the legal personal representatives.

In re Hargreaves, 1890, 44 Ch. D. 236, *applied*.

Summons to vary master's certificate. This was a summons taken out in administration proceedings by a residuary legatee to vary the master's certificate in so far as it certified that a debt of the testator to the defendant in the administration summons had been allowed, and in so far as it further certified that there was due in respect of that debt a particular sum. An action had been brought against the testator in his lifetime by one, Theresa Nightingale, which resulted in a judgment by consent upon terms that so long as the said Theresa Nightingale should abstain from molesting him and from using his name she was to receive a sum of £2 a week every Friday. The testator, by his will, which he made in 1917, appointed the plaintiffs his executors and bequeathed certain legacies, and left his residuary estate to his fiancée, Rachel Verheyden. The testator paid the annuity regularly down to his death and the executors continued paying it for some time until they realised that the estate would not be sufficient to provide for all the debts and legacies and the capital value of this annuity. They thereupon took out an originating summons for administration, making Theresa Nightingale the only respondent to such summons. The usual order was made on this summons, but the master directed that such order should be served on the residuary legatee, which was done. After

hearing counsel for the residuary legatee, the master made his certificate that the residuary estate amounted, roughly, to £1,100, and allowing the annuity at the capital value thereof of £1,400 or thereabouts. It was contended (*inter alia*) on behalf of the residuary legatee that Theresa Nightingale was only entitled to have £2 a week paid to her each Friday until she took the name of Pink or died or until the fund was exhausted, whichever event happened first, and that anything over after such event should belong to the testator's estate. And it was pointed out that if the executors, instead of starting proceedings, had chosen to go on paying the £2 each week to Theresa Nightingale, she would have been unable to bring any proceedings to claim the capital value, and on this point *Re Hargreaves, supra*, was relied on, and *In re Levy*, 1895, 1 Ch. 653, referred to. It was also pointed out on Miss Verheyden's behalf that under the old law Theresa Nightingale would have had no right to the capital sum, and *Reed* v. *Blunt*, 5 Sim. 567, was referred to. It was further submitted that the said Theresa Nightingale could not discharge the onus which was upon her to prove that the testator's estate was "insufficient for the payment in full of his debts and liabilities" within the meaning of s. 10 of the Judicature Act, 1875.

CLAUSON, J., after stating the facts and pointing out that the proceedings by originating summons had been irregular because there was no representation before the court of the beneficial interest, but that this defect had been cured by service of the order on the residuary legatee, at any rate for the purpose of this application, to vary the master's certificate, continued as follows: The master has set a capital value on this annuity, and the question is whether he was justified in so doing, having regard to s. 10 of the Judicature Act, 1875 (now replaced by s. 34 of the Administration of Estates Act, 1925). The question for me is, am I able to say whether this estate is solvent or insolvent? The problem will be the same in the future, although the language of the two sections is slightly different. The problem is this. Is the annuitant, on whom the onus is cast of satisfying the court that the estate is insolvent, entitled for the purpose of testing the solvency of the estate, to have her annuity valued, and treat the capital amount as a debt against the estate? No authority has been cited in which the value of the contingent liability has been taken into account in order to prove the estate to be insolvent. The case of *In re Milan Tramways Company*, 1884, 25 Ch.D. 587, however, affords some guidance, but that was a case of a company in liquidation, and it was held that there was some presumption that the assets would be insufficient to pay debts in full. But in the case of the administration of a deceased person's estate there is no reason for making any such presumption. The question is really one of fact, whether there exists good reason for believing that estate is insolvent. That can only be ascertained by finding out the value of the annuitant's interest, and must depend upon the expectation of her life. She is fifty-five years old, and if she lives the normal period the evidence available shows that the value of the annuity is a sum large enough to render the estate insolvent. In the result, I feel myself entitled to draw the inference that the estate is insolvent and refuse the application to vary the certificate.

COUNSEL: *L. Morgan May; J. D. Israel; A. J. Belsham.*

SOLICITORS: *Kimbers, Williams & Co.; Judge and Priestley; Appleton & Co.*

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Pointing *v.* Wilson.

Lord Hewart, C.J., Avory and Salter, JJ. 28th October.

JUSTICES—APPEAL—QUARTER SESSIONS—ASSAULT—PRISON OFFICER TREATED AS CONSTABLE—PRISONS ACT, 1898 (61 & 62 Vict., c. 41), s. 10.

A prison officer acting as such, is, by s. 10 of the Prisons Act, 1898, entitled to the same protection as a constable, and a person found guilty of assaulting a warder is liable on summary conviction to a sentence of six months' imprisonment instead of the maximum of two months' imprisonment for an assault on an ordinary person.

This case stated by the Hampshire Quarter Sessions raised a point of an unusual character. The appellant was in May, 1926, a convict in Parkhurst Prison, undergoing a sentence of three years' penal servitude for unlawful wounding. On the 15th May he assaulted one of the warders, and on the 17th May was taken before the Governor, who sent him before the visiting justices on the 2nd June. The justices recommended that he should be flogged, but owing to his having a weak heart this could not be done. He was served with a summons on the 18th June, and on the 26th June was sentenced to six months' hard labour to follow the term of penal servitude. The appellant had contended that the justices could not deal with him, because it was not his fault that he had not already been flogged. He served notice of appeal on the justices, containing eleven grounds of appeal. The appeal was dismissed by the quarter sessions on the 20th June, but a case was stated whether a person who assaulted a warder was liable on summary conviction to the same penalty as if he had assaulted a constable, and not an ordinary person. By s. 10 of the Prisons Act, 1898, "every prison officer while acting as such shall, by virtue of his appointment, have all the powers, authorities, protections, and privileges of a constable." The question was, whether is the fact that a man who commits an assault (in the nature of a common assault) on a constable is liable when dealt with summarily to receive four months' hard labour more than he ought, in the nature of a protection to the constable? Counsel for the appellant submitted that the word protection did not cover assault, but was a protection from any civil action. He referred to "Archbold's Criminal Pleading," pp. 961 and 964, but Lord Hewart, C.J., said that from the whole of that reference a prison officer would to all intents and purposes be a police officer. Counsel also referred to "Halsbury's Laws of England," Vol. IX, p. 576, and to "Stone's Justices' Manual," 1926, Pt. V, and stated that no reference was made to s. 10 of the Prisons Act, 1898, throughout the article on assault on pp. 337–344. He submitted that the punishments that might be awarded by the Governor were a more efficient protection for the prison officer. Counsel for respondent was not called upon.

Lord HEWART, C.J., in giving judgment, said that it was a perfectly clear case. The question was whether there was power in the chairman of petty sessions to pass a sentence of six months' hard labour on the appellant. He thought there was, and the quarter sessions clearly thought so too. It was not disputed that if the appellant or anybody had assaulted a constable he would be liable to six months' imprisonment with hard labour. The argument was that the provision relating to punishment did not refer to a prison officer as such. By s. 10 of the Prisons Act, 1898, however, all the powers, authorities, protections and privileges of a constable are conferred on prison officers. The argument for the appellant depended on two errors: (1) The whole of the section was ignored except the word "protection"; (2) an extremely limited meaning was placed on the word "protection." The section clearly put prison officers on the same footing as a constable in respect of the measure of punishment to which his assailant was liable. The appeal failed.

AVORY and SALTER, JJ., concurred.

COUNSEL: For the appellant, *W. E. Lloyd*; for the respondent, *H. G. Garland.*

SOLICITORS: *Speechly, Mumford & Craig*, for *Lamport, Bassitt & Hiscock*; *The Director of Public Prosecutions.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law].

Societies.

The Law Society.

PRELIMINARY EXAMINATIONS.

The following candidates, whose names are in alphabetical order, were successful at the Preliminary Examination of The Law Society, held on 13th and 14th October :—

Albert, Edward John Mayer ; Barnett, Frank Whitaker ; Butlin, Walter Hope ; Connor, John Francis ; Cope, Charles Robert Atcherley ; Curry, Hugh ; Dickinson, Eric ; Edwards, Charles Edwin ; Garrett, Cuthbert William ; Gould-Porter, Geoffrey Clement ; Griffiths, Trefor Price ; Hatton, George Oskleston ; Howard, Ernest Walton ; Hunt, Thomas Ronald Clifford ; Jones, Graham Glyn ; Kemble, Theodore Patrick Kenneth ; Levy, Solomon Charles ; Merritt, Bryan Aubrey ; Money, Robert Washbourne ; Palmer, Walter Stuart ; Quinn, Roger Joseph ; Redgwell, Arthur Colin ; Rigby, Robert ; Robertshaw, John Walter Sykes ; Rutledge, Gerald Francis ; Skelhorn, Norman John ; Smythe, John Gerald Lyster ; Sorrell, Dudley ; Sword, Alexander Bruce Dennistoun ; Thomas, Robert Auriol Benton ; Ward, Edward Percy ; Webb, Geoffrey Royce ; Whitelock, Godfrey Lupton Richardson ; Wickham, Hugh Charles ; Widdows, John Sherard ; Younghouse, Arnold Chadwick.

No. of candidates, 69. Passed, 36.

United Law Society.

A meeting of the Society was held in the Middle Temple Common Room on 1st inst., Mr. L. F. Stemp in the chair. The Rt. Hon. Lord Morris, P.C., K.C.M.G., K.C., delivered an address on the question, " Would a union of both branches of the legal profession be beneficial to the public, and in the interest of the profession ? " In the discussion which followed there spoke Mr. F. M. Guedalla, Mrs. Normanton, Miss C. M. Beatty, Messrs. J. R. Yates, H. P. Gisborne, W. G. Galbraith, I. Lloyd, C. R. Morden, S. Luboshez, D. W. Gaskell and J. MacMillan. Lord Morris replied. There was a large attendance.

The annual bar mess of the Central Criminal Court will hold their annual dinner on Friday, 26th November, at the Connaught Rooms, under the presidency of Mr. H. J. Turrell.

Gray's Inn.

The Treasurer (Master W. Clarke Hall) and the Masters of the Bench of Gray's Inn entertained at dinner last Monday, in Gray's Inn Hall, the Dominion Ministers attending the Imperial Conference. Those present included :—

The Hon. W. S. Monroe (Prime Minister of Newfoundland), The Right Hon. J. G. Coates, M.C. (Prime Minister of New Zealand), The Hon. The Maharaja of Burdwan, G.C.I.E., K.C.S.I., The Right Hon. The Earl of Balfour, K.G., The Right Hon. The Lord Chief Justice of England, The Right Hon. Sir Francis Bell, G.C.M.G., K.C., The Hon. Ernest Lapointe, K.C. (Minister of Justice, Canada), Mr. Kevin O'Higgins, T.D. (Minister of Justice, Irish Free State), The Hon. W. J. Higgins, K.C. (Minister of Justice, Newfoundland), Mr. Vincent Massey (Canadian Minister Designate, U.S.A.), The Hon. L. A. Taschereau, K.C. (Prime Minister of Quebec), The Hon. N. C. Havenga (Minister of Finance, South Africa), The Hon. Sir P. T. McGrath, K.B.E. (President of the Legislative Council, Newfoundland), The Hon. A. B. Morine, K.C., The Hon. J. G. Latham, C.M.G., K.C. (Attorney-General, Australia), Major-General J. H. MacBrien, C.B., C.M.G., D.S.O. (Chief of the General Staff, Canada), The Hon. S. Smit (High Commissioner for South Africa), Sir A. C. Chatterjee, K.C.I.E. (High Commissioner for India), Mr. Victor Gordon (High Commissioner for Newfoundland), Sir William Hoy, K.C.B.

The Benchers present, in addition to the Treasurer, were :—Sir Miles Mattinson, K.C., Sir Lewis Coward, K.C., Mr. T. Terrell, K.C., The Right Hon. Lord Merrivale, Mr. Herbert F. Manisty, K.C., Mr. Edward Clayton, K.C., Mr. Arthur E. Gill, The Right Hon. Lord Justice Atkin, The Right Hon. The Earl of Birkenhead, Sir Montague Sharpe, K.C., The Hon. Mr. Justice Greer, His Honour Judge Ivor Bowen, K.C., Sir Alexander Wood Renton, K.C.M.G., K.C., Mr. R. E. Dummett, The Right Hon. Sir Hamar Greenwood, Bart., K.C., M.P., Vice-Chancellor Courthope Wilson, K.C., Mr. W. Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. Frederick Hinde, with the Chaplain (the Rev. W. R. Matthews, D.D.), and the Under-Treasurer (Mr. D. W. Douthwaite).

During dinner each member of the company drank, according to the ancient custom of the Society, to " The pious, glorious and immortal memory of Good Queen Bess." There were no speeches.

The Magistrates' Association.

The fifth annual conference of the Magistrates' Association was held on the 27th October, in the Guildhall, London, when about 250 members were present from different parts of England and Wales. Sir Robert Wallace, K.C., chairman of the County of London Sessions, presided at the morning session, and Lord Haldane, the president of the association, at the afternoon session.

Alderman Sir George Wyatt Truscott, on behalf of the Lord Mayor, who was not well enough to be present, welcomed the association, which he congratulated on its growth, and the practical manner in which it approached its work.

The morning session was devoted to addresses by Mr. A. C. L. Morrison, chief clerk of the Lambeth Police Court, and Mr. Albert Lieck, chief clerk of the Marlborough Street Police Court, upon the Criminal Justice Act, 1925, and to discussion arising out of these addresses.

Mr. Morrison began by quoting from *Berwick* v. *Oswald*, 1854, 3 E. & B. 670, the words of Maule, J., " It is beyond the power of the courts, or of an Act of Parliament, to recall a day which has passed, or make a thing that has happened not have happened " ; and he pointed out that in the Probation of Offenders Act, 1907, Parliament had conferred upon magistrates something very like a power " to make a thing which has happened not have happened."

After reviewing the history of probation from the time when it had, though some time in operation, not been given a name, the lecturer enlarged upon the wide scope of the Probation Act, 1907, under which old offenders as well as so-called " first offenders " could be dealt with, and said that Part I of the Criminal Justice Act, 1925, marks the point at which probation has been definitely removed from the experimental stage, and been recognised as part of the machinery of the criminal law, no more to be ignored than prison, or fines or certified schools. Part I aims, he said, at encouraging the development of the probation system in the light of experience, making compulsory the appointment of officers and the formation of probation committees of the justices, and standardising salaries of officers on a reasonable scale.

The lecturer proceeded to deal with the composition and the functions of probation committees, after which he went on to the consideration of details of recognisances, and a number of more or less technical matters of importance. He also dealt with the financial arrangements under the Act. Points specially emphasised were the absolute necessity of a finding of case proved before making an order of any kind under the Act, the need of inserting suitable conditions in probation orders, and the keeping in touch of probation officers and magistrates.

Mr. Lieck dealt with Parts II, III and IV of the Act, not confining himself entirely to a technical exposition of the law but introducing some of the history which led up to this important statute.

He said that an enquiring member of the association had asked why horse stealing was not triable summarily, but that a complete answer to this question would involve the history of the great debate between Church and State, one incident of which was the death of Thomas à Becket, because the present classification of larcenies into simple larceny, and larcenies for which special punishments are provided, partly came about through the institution of benefit of clergy and its later piecemeal withdrawal ; that the framers of the Act, being unable to make all offences of larceny triable summarily, had to make a choice and stop somewhere, even if no logical point of stoppage could be found.

In dealing with consent to summary trial, Mr. Lieck remarked that consent to the jurisdiction of the judge was very ancient, at one time being extorted under pressure from persons who refused to plead—the very literal pressure of weights being laid on the prostrate body of the accused until he either pleaded or died. Summary jurisdiction for indictable offences began in 1847 with the trial of persons under fourteen for simple larceny, had been gradually, and then rapidly developed, until, even before the passing of the new Act, justices tried ten indictable offences to the jury's one.

After considering how far the Act was retrospective, the speaker touched on the very serious difficulty arising upon ss. 13 and 19, the one intended to effect an economy of witnesses' time and expenses, and the other to dispense with the grand jury in certain cases, the difficulty being as to what constitutes a plea of guilty within the meaning of these sections.

Many other points under the Act were dealt with—the enlarged venue, the doing away with backing of warrants, changes in taking depositions, new rights of appeal, the abolition of the presumption of coercion, and the difficulties arising out of charges of being drunk in charge of mechanically propelled vehicles.

At the afternoon session Lord Haldane announced his resignation of the presidency of the association on medical grounds, and Lord Cave was elected in his place.

Lord Haldane gave an admirable brief address, in which he said the duty of the magistrate was to apply the standard of good citizenship in the courts where he sat. He must be fair-minded, and look at each concrete case, taking all its circumstances into account. Class considerations were totally illegitimate and must be excluded by working people as well as by the landed gentry.

Sir JOHN ANDERSON, the Permanent Under-Secretary for Home Affairs, then addressed the meeting on the distinction between judicial and administrative functions. These functions, he said, could not be distinguished merely by reference to the kinds of authority to whom they were entrusted, nor be deduced from the natural construction of the words themselves. All functions could be brought under three heads: ministerial, judicial and administrative. Ministerial functions, such as taking a declaration of conscientious objection, were automatic, non-discretionary; judicial functions, such as the trial of an accused person, he would define as the ascertainment of truth and its application in the light of fixed rules of law; here there arose no question of expediency or general policy; in the administrative function, there was a large element of expediency or general policy.

Administrative functions can be delegated; judicial can not.

After remarking upon the fact that judicial authorities are entrusted with judicial duties and judicial authorities with administrative duties, the speaker adverted to the importance of an absolutely independent judiciary, and said that for this reason the Home Office frequently deliberately refrained from putting its views before justices, even when that would be proper, lest public confidence should be diminished.

Mr. CLARKE HALL spoke on the importance of children's courts. The object of the treatment of the child delinquent was always his reformation. When this principle was accepted they must rule out every method of treatment which was not reformative. They must see that children's courts were of a different status from all other courts where criminal trials were held, and advocated even the charging of children not in the police station, but before the juvenile court itself.

Miss ELIZABETH HALDANE gave an address on the "Poor Man's Lawyer in Scotland." The matter of legal aid for the poor was, she said, of pressing importance, and the report of the Committee was awaited with special interest. The country was proud of its administration of justice, and they wanted it to be as free to the poorest as to the richest.

The meeting concluded with a vote of thanks to Lord Haldane for his great services to the association.

Halifax Incorporated Law Society Limited.

The annual general meeting of the above society was held at the Library, Harrison-road, on Thursday, the 28th ult., when the following officers were elected for the ensuing year:—

President: Leonard Storey. Vice-Presidents: J. W. Pickles and E. W. Hinchliffe. Governors: D. Garsed, LL.B., H. Boocock and C. S. Walker. Committee: J. W. Aked, A. C. Akeroyd, W. Bailey, Harold I. Bearder, M.A., W. A. Chislett, Percy R. Gray, J. H. Helliwell, J. H. Hill, L. H. Longbotham, and Lewis Rhodes, M.A. Hon. Librarian: Ernest A. Steele, LL.B. Hon. Secretary: Edmund Schofield. Hon. Treasurer: John Mitchell. Hon. Auditors: G. M. Riley, M.A., LL.M., and L. Shepherd. Representatives to Yorkshire Union of Law Societies:—J. W. Aked, J. A. Helliwell. Representatives to Yorkshire Board of Legal Studies:—J. H. Helliwell, H. Boocock.

Law Students' Journal.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, 2nd inst. (chairman, Mr. J. Shadwick), the subject for debate was "That in the opinion of this House dictators in Europe are a menace to the peace and prosperity of the world." Mr. H. Shanly opened in the affirmative. Mr. E. G. M. Fletcher led in the negative. Messrs. Spurrell, Tucker, Riordan, Finn, Levi, Pratt and Malone and Miss Young having spoken, and the opener having replied, the chairman summed up, when the motion was put to the meeting and lost by three votes. There were fifteen members and two visitors present.

Rules and Orders.

THE MANORIAL INCIDENTS (EXTINGUISHMENT) RULES, 1925, DATED AUGUST 6, 1925, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER THE POWERS VESTED IN HIM BY SECTION 139 (4) OF THE LAW OF PROPERTY ACT, 1922.

(*Continued from page* 1073.)

PART V.

Supplementary Provisions.

55. *Application of Rules to part of manor.*]—(1) The Minister may by order under his seal direct that a part of a manor specified in the order shall be considered as a manor for the purpose of effecting an extinguishment under these Rules, and these Rules shall apply accordingly.

(2) An order shall not be made under this Rule for the purposes of a voluntary extinguishment without the consent of the lord in writing under his hand and seal.

56. *Minister to make annual report.*]—The Minister shall in every year make a general report of his proceedings in the execution of these Rules, and the report shall be laid before both Houses of Parliament as soon as may be after it is made.

57. *Delegation of powers of Minister.*]—(1) The Minister may delegate to any officer of the Ministry any of his powers under these Rules except the power to confirm agreements or determine compensation or to frame forms, or to do any act required by these Rules to be done under the seal of the Minister.

(2) The powers so delegated shall be exercised under such regulations as the Minister directs.

(3) The Minister may recall or alter any power delegated under this Rule, and may, notwithstanding the delegation, act as if no delegation had been made.

(4) All acts done by an officer of the Ministry lawfully authorised in pursuance of this Rule shall be obeyed by all persons as if they proceeded from the Minister, and the non-observance thereof shall be punishable in like manner.

58. *Power of entry for purposes of these Rules.*]—(1) An officer of the Ministry and a valuer appointed under these Rules and their agents and servants respectively, may enter on any land proposed to be dealt with under these Rules and may make all necessary measurements, plans, and valuations of the land.

(2) A person before entering on land under this Rule must give reasonable notice of his intention to the occupier of the land.

(3) If a person does any injury in the execution of the powers of this Rule he shall make compensation therefor.

59. *Penalty for obstructing persons administering these Rules.*]—If any person obstructs or hinders an officer of the Ministry or a valuer acting under these Rules, he shall be liable on summary conviction to a fine not exceeding five pounds.

60. *Interpretation.*]—(1) In these Rules unless the context otherwise requires—

The expression "ecclesiastical corporation" means an ecclesiastical corporation within the meaning of the Episcopal and Capitular Estates Act, 1851, and the Acts amending the same:

The expression "heriot" includes a money payment in lieu of a heriot:

The expression "lord" includes the person for the time being filling the character of or acting as lord whether lawfully entitled or not, and, where the context so requires, means any person having power to effect a compensation agreement in right of the manorial incidents:

The expression "manor" includes a reputed manor:

The expression "Minister" means the Minister of Agriculture and Fisheries:

The expression "rent" includes every payment or render in money, produce, kind or labour due or payable in respect of any land held of or parcel of a manor:

The expression "steward" includes a deputy steward and a clerk of a manor and any person for the time being filling the character of or acting as steward whether lawfully entitled or not:

The expression "tenant" means the person in whom the land enfranchised under Part V of the Law of Property Act, 1922, is thereby or by the Law of Property Act, 1925, or the Settled Land Act, 1925, made to vest and the persons deriving title under him, and includes the person entitled to the legal estate in or the possession of any other land subject to manorial incidents, whether or not those incidents have been severed from the manor.

(2) Where under the Law of Property Act, 1922, the period of ten years from the commencement of that Act has by order of the Minister been extended in respect of a manor any reference in these Rules to the said period of ten years or to the first day of January, nineteen hundred and twenty-six, shall be construed in respect of that manor as if the extended period

and the date of its expiration had been substituted for the said period and date.

61. *General Savings.*]—Nothing in these Rules shall interfere with any extinguishment which may be made independently of these Rules, or with the exercise of any powers contained in any Act of Parliament.

62. *Saving as to land registry.*]—Nothing in these Rules shall effect any right acquired in pursuance of registration under the Land Registry Act, 1862, or the Land Registration Act, 1925, except to such extent as may be recorded by registration in pursuance of those Acts.

PART VI.

FORMS.

63. *Forms.*]—The following are the forms referred to in the foregoing Rules:—

Rule 2.—1. *Declaration to be made by Valuer.*

I, *A.B.*, declare that I will faithfully, to the best of my ability, hear, value, and determine the matters referred to me under the Manorial Incidents (Extinguishment) Rules, 1925.

A.B.

Made and subscribed before me
this day of , 19 . *C.D.*
A Justice of the Peace for
the County of .

Rule 26.—2. *Certificate of Charge for Principal Sum.*

The Minister of Agriculture and Fisheries hereby certifies that the property mentioned in the schedule to this certificate is charged with the payment to *A.B.*, and the persons deriving title under him, of the sum of pounds, with interest thereon payable half-yearly, at the rate of five and a half pounds per cent. per annum from the ,
and the Minister further certifies that after payment of the principal money hereby charged and all arrears of interest due thereon this certificate shall be void. In witness whereof the Minister has caused his Official Seal to be hereunto affixed this day of , 19 .

Schedule.

[Property charged.]

3. *Certificate of Charge for Annual Instalments.*

The Minister of Agriculture and Fisheries hereby certifies that the property mentioned in the schedule to this certificate is charged with the payment to *A.B.* and the persons deriving title under him of the sum of pounds to be paid by twenty equal annual instalments, the first instalment to be paid on the first day of January nineteen hundred and , with interest on the said sum at per cent. per annum as from the day of nineteen hundred and , and the subsequent annual instalments to be paid on the first day of January in each subsequent year with interest at the rate aforesaid on the capital amount outstanding.

In witness whereof the Minister has caused his Official Seal to be hereunto affixed this day of , 19 .

Schedule.

[Property charged.]

Rule 26.—4. *Transfer of Certificate of Charge.*

I, *A.B.*, *of* [in consideration of the sum of the receipt whereof is hereby acknowledged] hereby transfer the charge created by the within certificate of charge to *C.D.*, of

Dated this day of , 19 .
A.B.

Rule 30.—5. *Power of Attorney.*

Manor of in the county of
I, *A.B.*, of , hereby appoint *C.D.*, of , to be my lawful attorney to act for me in all respects as if I myself were present and acting in the execution of the Manorial Incidents (Extinguishment) Rules, 1925.

Dated this day of , 19 .
A.B.

PART VII.

Scale of Compensation for Extinguishment of Manorial Incidents.

64. *Scale of compensation for extinguishment.*]—The following is the scale referred to in the foregoing Rules as regulating the ascertainment of compensation for extinguishment of manorial incidents:—

Rule 3.—*Fines Arbitrary.*

(1) In fine arbitrary cases where a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines shall not exceed the number of years' annual value of the land according to the age of the tenant as set forth in the table annexed to this scale.

(2) The table is calculated on the principle that a fine based on two years' annual value is payable on each change of tenancy; therefore, in those manors in which the customary fine on alienation by, or on the death of, a tenant, is based on more or less than two years' annual value, a proportionate increase or reduction shall be made in the amount of the compensation.

(3) In estimating the annual value of the land, no deduction shall be made for land tax or landlord's property tax, but the quit rent shall be deducted, and, where there are buildings, allowance shall be made for keeping the buildings in repair. In default of agreement the gross annual value of the land as separately assessed for the purposes of Schedule A. of the Income Tax Act, shall (save as hereinafter provided and unless the Minister for any special reason otherwise directs) be used as the basis for ascertaining the annual value: Provided that either party may in any case require the annual value to be assessed by an agreed valuer or by a valuer appointed by the Minister.

(4) Where there are facilities for improvement or the land has a present or prospective building value, one twentieth part of the capital value of the land as freehold to be determined (in default of agreement) by a valuer appointed by the Minister, shall be used as a basis for ascertaining the annual value.

Fines Certain.

(5) In fine certain cases where a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines shall be calculated by multiplying the amount of the fine by one half of the number of years' purchase given in the table according to the age of the tenant.

Reliefs.

(6) The amount of compensation for a relief shall be calculated in like manner as a fine certain.

Heriots.

(7) The compensation for a heriot payable on alienation by, as well as on the death of, a tenant, shall be calculated by multiplying the value of the heriot by one half of the number of years' purchase given in the table according to the age of the tenant.

(8) The value of a heriot shall be ascertained from the average value of the last three heriots taken or paid in respect of the land enfranchised. If that information cannot be obtained without undue expense the following circumstances shall be taken into account in fixing the value of the heriot, namely, the nature of the heriot, the character and value of the land, the condition in life of the tenant, and whether the heriot can be seized without as well as within the manor.

When Fine or Heriot payable only on one of the Events of Alienation or Death.

(9) The table being calculated on the assumption that fines and heriots are payable both on alienation *inter vivos* by a tenant and on his death, when a fine, whether arbitrary or certain, or a heriot, is payable only on one of those events, then only one half of the compensation calculated as previously directed shall be given.

When Fine or Heriot payable on Death of Lord.

(10) In manors in which fines or heriots are payable on the death of the lord, as well as on alienation by, or on the death of, a tenant, the compensation on the extinguishment of manorial incidents shall be increased according to the nature and amount of the customary fine or heriot payable in the manor on the death of the lord.

Quit Rents and other Annual Payments.

(11) The compensation for quit rents, free rents, and other annual rents, services, or payments, shall be calculated at 20 years' purchase.

Timber.

(12) Compensation for timber shall be ascertained as follows:—Where by a special custom of the manor the lord could enter upon the land, and cut and carry away the timber without the consent of the tenant, its whole value, after making a sufficient allowance for repairs, shall be given to the lord. But where there is no special custom, so that the ordinary law of copyholds would be applicable and therefore the lord could not enter and cut without the consent of the tenant, one half only of its value, after making a sufficient allowance for repairs, shall be given. If there be any other special custom in the manor relating to timber, such custom shall be regarded.

Other Incidents.

(13) The compensation for forfeitures and all other incidents of copyhold tenure extinguished or not saved by virtue of the Law of Property Act, 1922, and not otherwise provided for shall be twenty per cent. of the annual value of the land ascertained as provided in paragraphs (3) and (4) or where the copyhold interest liable to forfeiture is less than a customary fee simple or is subject to a lease binding on the lord twenty per cent. of the annual value of such copyhold interest to be ascertained in such manner as the Minister may determine to be proper.

This paragraph extends to forfeitures, whether or not for the conveyance or attempted conveyance of an estate of freehold in the land or for alienation without licence by way of sale, lease, mortgage or otherwise:

Provided that where by the custom of the manor the tenant has had an unrestricted right of demising and otherwise dealing with the land without the licence of the lord no compensation shall be payable under this paragraph unless the Minister otherwise determines; and where the unrestricted right relates to part only of the land the compensation shall be adjusted accordingly.

Perpetually Renewable Copyholds.

(14) In the case of perpetually renewable copyhold land the compensation for the extinguishment of the manorial incidents payable on renewal shall be 20 years' purchase of the yearly rent (including additional rent) which would have been payable under the 15th Schedule to the Law of Property Act, 1922, if that Schedule were applicable, and until the incidents are extinguished the said rent (including as aforesaid) shall be payable as a quit or free rent in respect of the land, and except in so far as the same shall have been paid shall be added to the compensation.

Escheat and other Rights reserved.

(15) The right of escheat being abolished for the benefit of the Crown, or the Duchy of Lancaster or the Duke of Cornwall, its value is not to be taken into consideration.

If any rights reserved to the lord by the Twelfth Schedule to the Law of Property Act, 1922, are acquired by the tenant the amount of the compensation therefor shall be ascertained by agreement.

When Land held by Joint Tenants or on behalf of Tenants in Common.

(16) In the case of an extinguishment of manorial incidents by joint tenants, the compensation for fines, and heriots, if any, shall be based upon such a single life as may be equivalent to the expectation of survivorship of the joint lives according to the rules and tables appended to the Succession Duty Act, 1853. This provision shall apply to an extinguishment of manorial incidents by trustees for sale (whose expectation of survivorship shall be taken into account) on behalf of persons interested as co-parceners or tenants in common in the net proceeds of sale.

Interest.

(17) Interest shall be payable half-yearly on the amount of the compensation at the rate of five and a half pounds per cent. per annum from the date of the agreement or notice requiring the ascertainment of the compensation to the date of payment of the compensation, unless the compensation is paid by way of an annual terminable rentcharge under these Rules.

Date of Computation.

(18) The value of any matter to be taken into account in ascertaining the compensation payable shall be calculated as at the date of the extinguishment.

TABLE REFERRED TO IN THE FOREGOING SCALE.

Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.
5 or under	1.06	38	2.00	72	3.31
		39	2.03	73	3.35
		40	2.07	74	3.38
6	1.09	41	2.10	75	3.41
7	1.11	42	2.14	76	3.45
8	1.14	43	2.17	77	3.48
9	1.16	44	2.21	78	3.51
10	1.19	45	2.25	79	3.54
11	1.21	46	2.29	80	3.56
12	1.24	47	2.33	81	3.59
13	1.26	48	2.36	82	3.62
14	1.29	49	2.40	83	3.64
15	1.31	50	2.44	84	3.67
16	1.34	51	2.48	85	3.69
17	1.37	52	2.52	86	3.71
18	1.39	53	2.56	87	3.73
19	1.42	54	2.60	88	3.75
20	1.45	55	2.65	89	3.77
21	1.48	56	2.69	90	3.79
22	1.51	57	2.73	91	3.80
23	1.53	58	2.77	92	3.82
24	1.56	59	2.81	93	3.83
25	1.59	60	2.85	94	3.85
26	1.62	61	2.89	95	3.86
27	1.65	62	2.93	96	3.87
28	1.68	63	2.97	97	3.89
29	1.71	64	3.01	98	3.90
30	1.74	65	3.05	99	3.91
31	1.77	66	3.09	100	3.92
32	1.80	67	3.13	101	3.93
33	1.83	68	3.17	102	3.94
34	1.86	69	3.20	103 or upwards	3.96
35	1.90	70	3.24		
36	1.93	71	3.28		
37	1.96				

In constructing this Table a fine arbitrary on admission has been taken as based on two years' annual value, and whilst the average fine interval has been assumed to be 14 years, regard has been had to the age of the tenant.

Where the enfranchised land is by the Law of Property Act, 1922, made to vest in a corporation the same compensation shall be payable as if 40 years were the age of the tenant.

PART VIII.

65. *Scale of Steward's Compensation. Rule* 9.]—The following is the Scale referred to in the foregoing Rules as regulating steward's compensation for loss of office.

SCALE OF STEWARD'S COMPENSATION FOR LOSS OF OFFICE.

In fine arbitrary cases.	In fine certain cases.	Amount of compensation to the steward.
Where the compensation to the Lord—	Where the compensation to the Lord—	£ s. d.
Does not exceed £1.	Does not exceed 12s.	7 6
Exceeds £1 but does not exceed £5.	Exceeds 12s. but does not exceed £3.	15 0
Exceeds £5 but does not exceed £10.	Exceeds £3 but does not exceed £6.	1 10 0
Exceeds £10 but does not exceed £15.	Exceeds £6 but does not exceeds £9.	3 0 0
Exceeds £15 but does not exceed £20.	Exceeds £9 but does not exceed £12.	4 10 0
Exceeds £20 but does not exceed £25.	Exceeds £12 but does not exceed £15.	6 0 0
Exceeds £25 but does not exceed £50	Exceeds £15 but does not exceed £30.	9 0 0
Exceeds £50 but does not exceed £100.	Exceeds £30 but does not exceed £60.	10 10 0
For every additional £25 or fractional part of £25 over and above the first £100.	For every additional £15 or fractional part of £15 over and above the first £60.	7 6

1. A steward appointed after the twenty-ninth day of June, nineteen hundred and twenty-two, shall not be entitled to compensation for loss of office.

2. Where the compensation agreement, or notice to ascertain the compensation, relates to more than one tenement, the steward's compensation shall be calculated on the amount of the compensation payable to the lord under the agreement or notice.

3. The remuneration of solicitors in connexion with the extinguishment of manorial incidents shall from time to time be prescribed and regulated by general orders made by the Committee in England constituted or nominated under section two of the Solicitors Remuneration Act, 1881, and that the Act shall apply accordingly, and, if any dispute arises as to costs or expenses, the same shall be taxed by the registrar of the county court.

4. Where the lord is a solicitor, he shall, if he acts for himself, be entitled to costs and expenses in place of the steward, but (there being no steward) not to any steward's compensation unless otherwise agreed.

PART IX.

Short Title, Commencement and Application.

66. *Short Title, etc.*]—(1) These Rules shall come into operation on the first day of January, nineteen hundred and twenty-six, and may be cited as the Manorial Incidents (Extinguishment) Rules, 1925.

(2) These Rules do not extend to Scotland or Ireland.

Legal Notes and News.

Honours and Appointments.

NEW PEER'S TITLE.

It is notified that Sir Thomas Rolls Warrington, upon whom the King has conferred the dignity of a barony of the United Kingdom, will be known by the name, style and title of Baron Warrington of Clyffe of Market Lavington, in the County of Wilts.

The King has been pleased to approve the appointment of Mr. HAROLD ARROWSMITH BROWN, I.C.S., to be a Puisne Judge in the High Court of Judicature at Rangoon, in succession to Mr. Edward Dyce Duckworth, I.C.S., who will retire in January.

Mr. ARTHUR MALCOLM LATTER, K.C., has been elected a Bencher of the Honourable Society of Lincoln's Inn, in the place of the late Sir Thomas Erskine Holland, K.C. Mr. Latter, who was born in 1875, was educated at Marlborough, and at Balliol College, Oxford, where he was a Brackenbury scholar. He was called to the Bar in 1900, and took silk in 1922.

Mr. WILLIAM EVERARD DICKSON, Barrister-at-Law, has been appointed by the British Government, British Secretary to the Anglo-German Mixed Arbitral Tribunal, in succession to the late Mr. Harold Russell, Recorder of Bedford. Mr. Dickson was born at Geelong, Australia, and was called by Gray's Inn in 1914, and went the Midland Circuit. He served in the Army with distinction throughout the great war, gaining the M.C. and bar, and being mentioned in despatches. After the Armistice, Mr. Dickson served on the legal staff of the Army in Ireland.

The Council of the Law Society have appointed Mr. H. E. SALT, M.A., LL.B., of Gray's Inn, Barrister-at-Law, and Fellow of Trinity College, Cambridge, an Assistant Tutor at the Society's School of Law.

Mr. C. HERBERT COLLIS, solicitor, Registrar of Stourbridge County Court, has been appointed Registrar of Kidderminster County Court in succession to Mr. Ellis W. Talbot, who has resigned. Mr. Collis, who was admitted in 1880, will now hold the two appointments.

The Deputy Secretary to the Ministry of Health, Mr. E. R. Forber, has appointed Mr. D. C. L. WARD to be his private secretary.

Wills and Bequests.

Mr. Edward Montefiore Micholls, of Queen's-gate, London, S.W., and of Ford Manor, Arundel, Sussex, barrister-at-law, for thirty-four years chairman of the National Society for Epileptics, who died on 11th September, aged seventy-four, left unsettled property of the gross value of £9,887. He left: £100 each to the National Society for Epileptics and the Jews' Infant Schools; £50 to the Jewish Industrial School, Hayes; and £50 to his wife for distribution as she may see fit amongst his chauffeur and the indoor domestic servants in his service at his decease and not under notice, if of twelve months' service.

Mr. Joseph Rowlands, J.P., solicitor, of The Skelts, Malvern, Worcestershire, and of 41, Temple Row, Birmingham, for many years a member of the well-known firm of Rowlands and Co., and Chairman of the Midland Trust Limited, left estate of the gross value of £62,084.

Mr. C. H. Darby, solicitor, of Birmingham Road, West Bromwich, left estate of the gross value of £7,613.

Mr. Henry John Mead, solicitor, of the firm of Messrs. Mead, Sons & Bingham, of 22, Regent Street, S.W., left estate of the gross value of £8,787.

Mr. Wilfrid Thomas Rokeby Price, solicitor, of Rosary-gardens, South Kensington, S.W., and of Old Broad-street, E.C., who died on 15th August, left estate of the gross value of £9,589. He left £50 to his clerk, George Casse.

Partnership Dissolved.

CECIL URQUHART FISHER and KENELM HENRY HALLETT SMITH, solicitors, Cecil House, 57A, Holborn-viaduct, E.C.1, (C. Urquhart Fisher & Co.) by mutual consent as from 11th day of February, 1926. C. U. Fisher will continue to practise at Cecil House, 57A, Holborn-viaduct, and K. H. H. Smith at 6, Drapers'-gardens, Throgmorton-avenue, E.C.2, under his own name.

ASSESSMENT CLERKS AS CLERKS TO RATING AUTHORITIES.

In the last Official Circular of the Rural District Councils Association, it is stated that the association understands that in certain counties assessment committees have been advised that the clerk to a rating authority cannot also hold the appointment of clerk to an assessment committee under the Rating and Valuation Act, 1925.

It appears, however, that a contrary view is taken by counsel to the association, that body having been advised that there is nothing in the Act to prevent the clerk to a rating authority from holding the other appointment also. The question, however, had been raised with the Ministry of Health by the Kettering Rural District Council, and from a letter received by the latter body it appears that the Ministry also is of opinion that there is no legal objection to the dual appointment. The letter was in the following terms:—

> "The Minister is not aware of any legal objection to a clerk to a rating authority being also clerk to the assessment committee. As many clerks to union assessment committees are also clerks to rural district councils it is inevitable, looking to the provisions of the Act relating to transferred officers, that the clerks to the new assessment committees will, in many cases, also be clerks to acting authorities."

THE LORD CHANCELLOR ON THE LAW AND TRADE UNIONS.

The Lord Chancellor was the chief guest at a house dinner given on the 27th October, at the Junior Constitutional Club, Sir Herbert Hunter, chairman of the committee, presided.

The Lord Chancellor unveiled a portrait of the King, painted by Mr. Richard Jack, R.A., and presented to the club by an American donor, Mr. Rodman Wanamaker, who sent a telegram expressing the hope that the bonds uniting the two great English-speaking peoples might ever grow stronger.

The Lord Chancellor, in the course of his speech replying to the toast of his health, said that whatever the coal stoppage was at the beginning, it had become just an act of criminal folly. He was forced to the conclusion that the purpose of some of the leaders was not to help the men, but to use their somewhat pathetic trust as an instrument for ruining the industry. It was *sabotage* of the industry—a first step which would be followed by many others. They must do what they could to defeat that purpose. Recent events had shown how deep was the injury inflicted on the country and the workers by certain provisions of the Trade Union Acts, especially the Trade Disputes Act of 1906. It was impossible things should go on as they were. Section 4 of the Act of 1906 provided that a trade union should not be sued for doing wrong. He supposed the theory on which the section was based was that the weakness of the workmen in their unions required that they should be protected against their own thoughtless acts. But, taken together, the trade unions were not weak, but strong, and they had abused the privilege granted to them twenty years ago. The general strike had been pronounced to have been illegal. It was a conspiracy against the Government and the country. Trade unions such as that of the railwaymen had admitted in writing that they had done wrong, and yet there was no redress, no penalty. These unions, along with their officers, were the only persons who were exempt from responsibility for their wrong deeds, and could not be restrained from them by an injunction. That was wrong. The repetition of such an event as the general strike must be made impossible for the future.

"PEACEFUL PERSUASION."

Another section of the Act of 1906 provided that, while intimidation was illegal, the attending in any numbers at a place where a workman lived or worked or happened to be for the purpose of peacefully persuading him not to work should be legal. That provision had been abused. Attendance sometimes in considerable numbers at a man's home was a cruel thing and could never really be peaceful persuasion. The same was true of crowds who followed a worker about or met him with insults and threats as he went into or left his place of work. A man had a right to work, and it ought not to be the law that he could be intimidated. The very presence of a crowd on these occasions was intimidation.

If that kind of thing was to be stopped they must put in an Act of Parliament a new definition of what might be allowed. Registration of trade unions was optional. Unregistered unions might be subject to no rules, or no rules which anybody could know of or understand. There was no obligation even on the officers of registered unions to provide funds for the benefits for which the men subscribed. There was no need to have accounts audited by a skilled auditor. It often happened that when a man wanted the help for which he had paid no funds were forthcoming because they had been spent in promoting strikes or paying officials. That was a fraud, and ought to be stopped. There were other matters. The political levy must needs be seriously considered. The Government were alive to the absolute necessity of dealing with this question, and were ready when the time came to make proposals to Parliament. The legitimate functions of trade unions would not be disturbed. If it were said that a storm would be raised, his reply was that he was a poor mariner who was not ready to face a storm when necessity arose. Whatever opposition fair and just proposals aroused, they would meet with a greater volume of support.

FINED FOR INTIMIDATION.

Before the Littledean, Gloucestershire, magistrates on Friday five colliers and a woman were summoned for intimidating and using violence, the complainants being two miners who had returned to work. It was stated that the two men were returning home under police escort when they encountered a big crowd. They were booed and stones were thrown, striking the police motor-cycles. The defendants, whose identification was established by throwing a flash flare on the crowd, were fined £5 each, and ordered to share £15 costs between them, and be bound over for twelve months.

THE MINISTER OF HEALTH ON TOWN PLANNING SCHEMES.

The Ministry of Health has, in view of the general importance of the subject, issued as a separate publication (H.M.S.O., 6d. net) that part of its annual report for 1925-26 which relates to town planning. In this convenient form people interested in the subject will find useful and interesting information as to the position of town planning schemes throughout the country, the progress of regional planning, and the attitude of the Ministry on a number of points of general importance which have arisen.

The interest and progress in town planning generally have continued to be well sustained during the year, though the number of preliminary statements submitted and approved and of completed schemes, in the opinion of the Minister of Health, "continue to fall short considerably of what it should be." The land subject to town planning powers has increased by 400,000 acres, and the number of local authorities with schemes in course of preparation, by forty-three; whilst in the aggregate town planning schemes proposed or in operation on 31st March, 1926, were 498, covering 2,181,266 acres. The schemes finally approved during the year numbered twenty, and represented 31,333 acres. The proportion of land reserved for open spaces and allotments "is somewhat disappointing," and the Minister is not satisfied that more land could not be safely and prudently reserved for these purposes in the schemes.

With regard to the problem of preserving considerable tracts of land against the spread of building development, the Minister is of opinion that it is a matter which can best be dealt with by local authorities acting in combination over a wide area. The power given in the Town Planning Act for the establishment of joint committees and the promotion of joint schemes would appear to provide methods for this purpose, whilst, as a matter of fact, we gather that some existing joint committees are already considering the subject.

EXEMPTION FROM DUTIES ON IMPORTED CHEMICALS.

The Board of Trade give notice that representations have been made to them under s. 10 (5) of the Finance Act, 1926, regarding the following articles: Amidopyrin, barbitone, cocaine, cocaine hydrocloride, guaiacol carbonate, hydroquinone, methyl sulphonal, oxalic acid, phenacetin, phenazone, piperazine, salol and sulphonal.

Section 10 (5) of the Finance Act, 1926, is as follows:—

"The Treasury may by order exempt from the duty imposed by section one of the Safeguarding of Industries Act, 1921, as amended by this Act, for such period as may be specified in the order, any article in respect of which the Board of Trade are satisfied on a representation made by a consumer of that article that the article is not made in any part of his Majesty's Dominions in quantities which are substantial having regard to the consumption of that article for the time being in the United Kingdom, and that there is no reasonable probability that the article will within a reasonable period be made in his Majesty's Dominions in such substantial quantities."

Any person desiring to communicate with the Board of Trade with respect to the above-mentioned applications should do so by letter addressed to the Principal Assistant Secretary, Industries and Manufactures Department, Board of Trade, Great George-street, S.W.1, within two months from the date of this notice.

MAGISTRATES AND TECHNICAL TERMS.

During the hearing of a prosecution at Marylebone on Saturday, Mr. Bingley suggested that the Government ought to appoint magistrates with special mechanical knowledge to deal with difficult and abstruse points arising in motor cases.

In this instance, a motorist was summoned for not effectively silencing his car, and technical terms were freely used by Mr. Kearns, the solicitor defending, for the Automobile Association, a police engineer, and a motor engineering expert for the defence.

The magistrate confessed himself puzzled, saying he did not pretend to be an expert in these matters, and he thought magistrates with a technical knowledge should be appointed. On the one hand he had a technical gentleman who said that this was a standard car as turned out by a reputable firm, and, on the other hand, the police stated that it was making horrible noises, such as the Home Secretary had said must be stopped. He must accept the police evidence as to the noise, but he would be glad if the defendant would appeal against him.

On hearing that the defendant did not intend to appeal if fined, he dismissed the case on payment of 40s. costs, saying that he accepted the defendant's statement that the car was as from the makers.

MOTORING LAWS IN ULSTER.

In consequence of vigorous protests by motoring interests in Northern Ireland against the new motoring Bill introduced in the Northern Ireland Parliament, the Minister of Home Affairs (Sir Dawson Bates) agreed to introduce amendments in the Committee stage on Tuesday, the 26th October. The minimum penalty for reckless or wanton driving is reduced for a first offence from £5 to £1; for a second offence from £10 to £2, and for a third or subsequent offence from £10 to £5; the maximum penalties, which under the Bill as originally drafted were £50 for a first offence and £100 for a second or subsequent offence, being reduced to £10 for a first, £20 for a second, and £50 for a third or subsequent offence. The proposal to increase the cost of drivers' licences has been dropped, and the charge will remain at 5s. A clause which proposed to hold drivers responsible for "negligent" driving having regard to the traffic which might reasonably be expected, is to be deleted. The proposal to abolish pillion riding on motor-cycles is not included in the Bill, but Sir Dawson Bates, on the second reading, stated that pillion riding would be abolished under a new regulation which he intended to issue.

SIR DOUGLAS HOGG ON TRADE UNION LAW.

Speaking at Rotherham on Friday last Sir Douglas Hogg, the Attorney-General, said he desired to clear away the misconception that the Government wanted to smash the trade unions. The right to strike—by which he meant the right of any body of men to withhold their labour in order to obtain better industrial conditions for themselves—was a right which he would never consent to attack. "But the General Strike," he continued, "is no such right, but an attempt by a body of men or an association to coerce the community into doing something which it does not desire to do, by a process of starvation and ruin. That is not a right; it is a crime." The men should know in the most definite and clear terms that the General Strike is an illegal conspiracy against the State; that those who take part in it are engaged in a criminal conspiracy; and that in such an attack on the State the funds of the union might be liable.

Alluding to the position of Civil Servants, Sir Douglas remarked that the duty of Civil Servants was to serve the State, and it was impossible for them to discharge that duty if at the same time they owed allegiance to a body which claimed the right to attack the State. "You cannot serve two masters," he said, "and the Civil Servants ought to abstain from affiliation to any trades union congress."

ROYAL COMMISSION ON LOCAL GOVERNMENT.

The Royal Commission on Local Government of which Lord Onslow is chairman, have resumed their sittings, and are hearing oral evidence under the second part of their terms of reference, which relates to the constitution, areas and functions of local authorities generally. The first act of the commission on re-assembling was to pass a resolution of sympathy with Lady Myers and her family in the great loss which she has suffered by the death of their colleague, Sir Arthur Myers. The commission heard evidence from the Scottish Office on the Scottish system of local government; from the Ministry of Health on the changes in local government effected by the Rating and Valuation Act of last year; and from the Board of Trade on the administration of the law relating to weights and measures and other services.

RATING PROCEDURE.

The London Branch of the Incorporated Society of Auctioneers will hold a dinner at Maison Lyons, Shaftesbury Avenue, Piccadilly Circus, on Thursday, the 18th inst., at 7 p.m., after which Major W. H. Hamilton, J.P., will read a paper on "The new procedure for rating outside London." Mr. Percy W. Rogers will preside, and will be supported by the President of the Society (Mr. Samuel Wallrock).

THEATRES ACT, 1843.

The Lord Chamberlain gives notice that he proposes to issue annual stage play licences for theatres within his jurisdiction on Tuesday, 30th November, 1926.

THE CENTRAL DISCHARGED PRISONERS' AID SOCIETY (INCORPORATED).

The Home Secretary will be principal speaker at a meeting, at which Mr. Justice McCardie will preside, to be held by invitation in the Ball Room of Sir Philip Sassoon's House, Park-lane, on Armistice Day, at 3.30 p.m., in aid of the above society.

WOMEN AND THE BAR.

The principal feature of the results of the Michaelmas examination of students of the Inns of Court, held by the Council of Legal Education early last month, is the success in various subjects of eighteen women, the subject of real property and conveyancing accounting for just half. Iris de Freitas, of Inner Temple, passed in three subjects, constitutional law and legal history, criminal law and procedure, and real property and conveyancing. Out of 122 students who were examined for the final, ninety-three were successful, these including two women, namely, Eileen Agnes Macdonald, of Middle Temple, who stood fourteenth in order of merit in Class II, and Winifred Packard Shyvers, Gray's Inn, who was placed in Class III.

FATHER EMPLOYED BY SON.

An eighteen-year-old youth, giving evidence at the London Sessions last week, said he set up in business as a waste-paper merchant when he was only sixteen, and engaged his father as manager.

"And is it not a fact," asked counsel, "that before that time your father was the manager in the service of your mother?"

"I did not know," replied the youth.

"What," said the deputy-chairman (Mr. H. W. W. Wilberforce), "you took your father into your employment without getting a reference from his last situation?"

Later the witness was asked if his father was allowed to draw what money he liked out of the business.

"Oh, dear no," he replied. "I gave him what I thought was right."

WOMEN JURORS ASKED TO LEAVE THE BOX.

On Wednesday, 27th ult., Mr. Justice Finlay, before continuing the hearing of an action brought by two plaintiffs who claimed damages for personal injuries, said:—

"My attention has been drawn to an incident which occurred yesterday afternoon when the court rose. That incident reflects not the slightest discredit on any of the parties to the action. But that incident has made me think—and both counsel agree—that it is desirable that this action should continue to be heard by the ten men jurors only, and that the two women jurors should be asked to be good enough to withdraw from the box."

The two women at once left the box.

Acting under the authority of a recent judgment, the Ontario Government has notified liquor exporters at Windsor, Sarnia, and other border points, that liquor for export cannot be held in warehouses, in scows, or on the docks, but must be shipped directly from the railway to its ultimate destination.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
M'nd'y Nov. 8	Mr. Hicks Beach	Mr. Ritchie	Mr. Synge	Mr. Ritchie
Tuesday .. 9	Bloxam	Synge	Ritchie	Synge
Wednesday 10	More	Hicks Beach	Synge	Ritchie
Thursday . 11	Jolly	Bloxam	Ritchie	Synge
Friday .. 12	Ritchie	More	Synge	Ritchie
Saturday.. 13	Synge	Jolly	Ritchie	Synge

Date.	Mr. Justice Astbury.	Mr. Justice Lawrence.	Mr. Justice Russell.	Mr. Justice Tomlin.
M'nd'y Nov. 8	Mr. More	Mr. Jolly	Mr. Bloxam	Mr. Hicks Beach
Tuesday .. 9	Jolly	More	Hicks Beach	Bloxam
Wednesday 10	More	Jolly	Bloxam	Hicks Beach
Thursday . 11	Jolly	More	Hicks Beach	Bloxam
Friday .. 12	More	Jolly	Bloxam	Hicks Beach
Saturday .. 13	Jolly	More	Hicks Beach	Bloxam

THE MIDDLESEX HOSPITAL.

WHEN CALLED UPON TO ADVISE AS TO LEGACIES, PLEASE DO NOT FORGET THE CLAIMS OF THE MIDDLESEX HOSPITAL, WHICH IS URGENTLY IN NEED OF FUNDS FOR ITS HUMANE WORK.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 11th November, 1926.

	Middle Price 3rd Nov.	Interest Yield. £ s. d.	Yield with Redemption. £ s. d.
English Government Securities.			
Consols 2½%	54½	4 12 0	—
War Loan 5% 1929-47	99⅝	5 0 6	5 0 6
War Loan 4½% 1925-45	93½	4 16 0	5 0 6
War Loan 4% (Tax free) 1929-42 ..	100⅛	4 0 0	4 0 0
War Loan 3½% 1st March 1928 ..	98¼	3 12 0	4 18 0
Funding 4% Loan 1960-90	84⅜	4 14 6	4 15 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	91⅞	4 7 0	4 9 0
Conversion 4½% Loan 1940-44 ..	95½	4 15 0	4 19 0
Conversion 3½% Loan 1961	74,⅜	4 14 0	—
Local Loans 3% Stock 1921 or after ..	62¾	4 16 0	—
Bank Stock	246	4 17 6	—
India 4½% 1950-55	91¾	4 18 0	5 0 6
India 3½%	69½	5 1 0	—
India 3%	59⅝	5 1 0	—
Sudan 4½% 1939-73	93¾	4 16 0	5 0 0
Sudan 4% 1974	83½	4 16 0	4 18 6
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..	79⅞	3 15 6	4 14 0
Colonial Securities.			
Canada 3% 1938	84	3 11 6	4 19 0
Cape of Good Hope 4% 1916-36 ..	91½	4 8 0	5 3 0
Cape of Good Hope 3½% 1929-49 ..	79½	4 8 0	5 1 0
Commonwealth of Australia 5% 1945-75	98⅜	5 2 0	5 3 0
Gold Coast 4½% 1956	95	4 15 0	4 17 0
Jamaica 4½% 1941-71	91½	4 18 6	5 0 0
Natal 4% 1937	91¾	4 7 0	4 19 0
New South Wales 4½% 1935-45 ..	89	5 1 0	5 10 0
New South Wales 5% 1945-65	94½xd	5 6 0	5 6 0
New Zealand 4½% 1945	95½	4 14 6	4 18 0
New Zealand 4% 1929	95⅞	4 3 6	5 8 0
Queensland 5% 1940-60..	95½	5 5 0	5 5 6
South Africa 5% 1945-75	100¾	4 19 0	5 0 0
S. Australia 5% 1945-75	97⅞	5 2 6	5 4 0
Tasmania 5% 1932-42	98½	5 1 6	5 2 6
Victoria 5% 1945-75	98⅛	5 2 0	5 4 0
W. Australia 5% 1945-75	98	5 2 0	5 3 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62¾	4 16 0	—
Birmingham 5% 1946-56	100⅛	5 0 0	5 0 0
Cardiff 5% 1945-65	100	5 0 0	5 0 0
Croydon 3% 1940-60	66	4 11 0	5 2 0
Hull 3½% 1925-55	75½	4 13 0	5 0 6
Liverpool 3½% on or after 1942 at option of Corpn.	72¾	4 16 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	51¼xd	4 17 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	61¼xd	4 18 0	—
Manchester 3% on or after 1941 ..	63	4 15 6	—
Metropolitan Water Board 3% 'A' 1963-2003	61½	4 17 6	4 18 0
Metropolitan Water Board 3% 'B' 1934-2003	62½	4 16 0	4 17 0
Middlesex C. C. 3½% 1927-47	79¾	4 8 0	5 0 0
Newcastle 3½% irredeemable	71⅞	4 18 0	—
Nottingham 3% irredeemable	61½	4 17 6	—
Stockton 5% 1946-66	100	5 0 0	5 0 0
Wolverhampton 5% 1946-56	99¼	5 1 0	5 1 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	81½	4 18 0	—
Gt. Western Rly. 5% Rent Charge ..	99½	5 0 6	—
Gt. Western Rly. 5% Preference ..	93½	5 7 0	—
L. North Eastern Rly. 4% Debenture	77	5 4 0	—
L. North Eastern Rly. 4% Guaranteed	72⅝	5 10 0	—
L. North Eastern Rly. 4% 1st Preference	64½	6 4 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	79½	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	77¼	5 3 6	—
L. Mid. & Scot. Rly. 4% Preference ..	71⅜	5 12 0	—
Southern Railway 4% Debenture ..	80¼	4 19 6	—
Southern Railway 5% Guaranteed ..	98	5 2 0	—
Southern Railway 5% Preference ..	93½	5 7 0	—